

	Page 1	Page 3
1	IN THE UNITED STATES DISTRICT COURT	1 ON BEHALF OF THE DEFENDANTS
2	FOR THE NORTHERN DISTRICT OF OHIO	2 CORNER ALLEY FOURTH LIMITED
3	EASTERN DIVISION	3 PARTNERSHIP, CORNER ALLEY UPTOWN, LLC,
4	---	4 CORNER ALLEY, LLC, MRN DEVELOPMENT
5	MELISSA YATSKO and DARIAN)	5 CORPORATION, MRN ENTERPRISES, LLC AND
6	ALLEN, Co-Admrs. of the)	6 MRN INVESTMENT GROUP, LLC:
7	Estate of Thomas Yatsko,)	7
8	Plaintiffs,) Case No.	8 Collins, Roche, Utley & Garner, LLC
9	-vs-) 1:18-cv-00814	9 Patrick M. Roche, Esq.
10	SERGEANT DEAN GRAZIOLLI,) Judge Dan A.	10 800 Westpoint Pkwy. Suite 1100
11	et al.,) Polster	11 Westlake, Ohio 44145
12)	12 216-916-7730
13	Defendants.)	13 pmroche@cruglaw.com
14	--- ooo ---	14
15	Videotaped deposition of SERGEANT DEAN	15
16	GRAZIOLLI, a Defendant herein, being called	16 ON BEHALF OF THE DEFENDANT
17	by the Plaintiffs as if upon cross-	17 CITY OF CLEVELAND:
18	examination under the statute, and taken	18
19	before Angelika P. Shane, a Notary Public	19 City of Cleveland Law Department
20	within and for the State of Ohio, pursuant	20 Michael J. Pike, Esq.
21	to agreement of counsel, on Wednesday, the	21 601 Lakeside Ave. Room 106
22	30th day of January, 2019, at 1:00 p.m., at	22 Cleveland, Ohio 44114
23	the offices of Spangenberg, Shibley & Liber,	23 216-664-2775 (Direct)
24	LLP, 1001 Lakeside Avenue, Cleveland, Ohio.	24 mpike@city.cleveland.oh.us
25	--- ooo ---	25
	Page 2	Page 4
1	APPEARANCES:	1 ON BEHALF OF SAFECO INSURANCE COMPANY
2		2 OF INDIANA:
3	ON BEHALF OF THE PLAINTIFFS:	3
4		4 Frost Brown Todd, LLC
5	Spangenberg Shibley & Liber LLP	5 Frank S. Carson, Esq.
6	Nicholas A. DiCello, Esq.	6 10 West Broad Street
7	Jeremy A. Tor, Esq.	7 One Columbus Suite 2300
8	Kevin C. Hulick, Esq.	8 Columbus, Ohio 43215
9	1001 Lakeside Avenue East Suite 1700	9 614-464-1211
10	Cleveland, Ohio 44114	10 fcarson@fbtlaw.com
11	216-696-3232	11
12	ndicello@spanglaw.com	12
13	jtor@spanglaw.com	13 VIDEOGRAPHER: George Tackla
14	khulick@spanglaw.com	14
15		15 ---
16		16
17	ON BEHALF OF THE DEFENDANT	17
18	SERGEANT DEAN GRAZIOLLI:	18
19		19
20	David M. Leneghan, Esq.	20
21	200 Treeworth Blvd. Suite 200	21
22	Broadview Heights, Ohio 44147	22
23	440-838-4260	23
24	leneghanlaw@yahoo.com	24
25		25

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1	OBJECTION INDEX			
2	BY PAGE/LINE			
3	Mr. Roche 36-9		1 VIDEOPHAGER: We're on the	
4	Mr. Roche 37-12		2 record. Will you please swear in	
5	Mr. Roche 38-7		3 the witness?	
6	Mr. Pike 41-3		4 ---	
7	Mr. Pike 41-9		5 SERGEANT DEAN GRAZIOLLI, of	
8	Mr. Pike 45-11		6 lawful age, a Defendant herein, having been	
9	Mr. Pike 46-7		7 first duly sworn, as hereinafter certified,	
10	Mr. Pike 46-17		8 deposes and says as follows:	
11	Mr. Pike 50-11		9 ---	
12	Mr. Pike 58-9		10 CROSS-EXAMINATION OF SERGEANT DEAN GRAZIOLLI	
13	Mr. Pike 59-19		11 BY MR. TOR:	
14	Mr. Pike 70-13		12 Q Good afternoon, sir.	
15	Mr. Leneghan 144-22		13 A Good afternoon.	
16	Mr. Pike 145-1		14 Q State your full name for the record,	
17	Mr. Pike 145-13		15 please.	
18	Mr. Roche 154-4		16 A Dean Victor Graziolli.	
19	Mr. Pike 156-16		17 Q And your date of birth?	
20	Mr. Roche 160-1		18 A	
21	Mr. Roche 168-21		19 Q What is your home address?	
22	Mr. Leneghan 204-13		20 A	
23	Mr. Pike 205-20		21	
24	Mr. Roche 205-22		22 Q How long have you lived there?	
25	Mr. Pike 207-20		23 A Almost 20 years.	
		Page 6	24 Q Who lives there with you?	
			25 A No one, just myself.	
				Page 8
1	BY PAGE/LINE		1 Q Was that your home address as of	
2	Mr. Pike 213-15		2 January 13th, 2018?	
3	Mr. Pike 214-19		3 A Did you say 2018?	
4	Mr. Roche 222-22		4 Q Correct.	
5	Mr. Pike 248-6		5 A Yes, it is.	
6	---		6 Q Was anyone living with you at that	
7			7 address at that time?	
8			8 A No.	
9			9 Q What is your work address?	
10			10 A 881 East 152nd Street.	
11			11 Q And what is that?	
12			12 A It's the Cleveland Division of Police,	
13			13 District Five.	
14			14 Q Are you married, sir?	
15			15 A I am not.	
16			16 Q Have you ever been married?	
17			17 A Yes.	
18			18 Q How many times?	
19			19 A Two times.	
20			20 Q And you've been divorced two times?	
21			21 A I have.	
22			22 Q To whom was your first marriage?	
23			23 A Kristine Wagner.	
24			24 Q And what year did you marry her?	
25			25 A 1996.	

	Page 9		Page 11
1	Q What year did you divorce?	1	Q Okay. So other than that one time
2	A 2000.	2	having had your deposition taken, can you
3	Q And your second marriage?	3	think of any other times you've had your
4	A Lanett Ventura.	4	deposition taken?
5	Q What year did you get married?	5	A No.
6	A 2013 to last year, 2018.	6	Q Have you ever testified in court?
7	Q Are you still a Cleveland police	7	A I have.
8	officer?	8	Q In a civil case?
9	A Yes.	9	A No, I don't recall.
10	Q What's your current rank?	10	Q But in criminal cases?
11	A Sergeant of Police.	11	A Yes.
12	Q All right, sir, you understand you're	12	Q All right. I'm sure your lawyer
13	here to have your deposition taken in this	13	explained the ground rules. You are
14	civil lawsuit brought on behalf of Thomas	14	represented by a lawyer here today?
15	Yatsko's parents?	15	A I am, yes.
16	A I do.	16	Q Who's your lawyer?
17	Q You understand you're named as a	17	A David Leneghan.
18	defendant in this case?	18	Q Okay. I'm going to go over the ground
19	A I do.	19	rules with you.
20	Q And you understand that in addition to	20	A Okay.
21	yourself, the City of Cleveland and Corner	21	Q This is a deposition. I'll be asking
22	Alley Uptown, LLC are named defendants in	22	questions and you'll be providing the
23	this case?	23	answers, okay?
24	A Yes.	24	A Okay.
25	Q Have you ever had your deposition taken	25	Q It's important that you answer verbally
	Page 10		Page 12
1	before?	1	because we have a court reporter here.
2	A Concerning this?	2	Understood?
3	Q Ever in any case.	3	A Mm-hmm, yes.
4	A I think once in an accident, accident	4	Q Okay. Wait for me to finish my
5	case.	5	questions before you answer, okay?
6	Q Like a personal injury case?	6	A Yes.
7	A It was a -- it was just a car accident	7	Q And I'll try to do the same, I'll try
8	that I think we did the paperwork on.	8	not to cut you off, okay?
9	Q Were you injured in that car --	9	A Yes.
10	A I was not, no.	10	Q If you don't understand my question,
11	Q Were you the responsible driver in that	11	you need to tell me that, okay?
12	case?	12	A Okay.
13	A No.	13	Q I'm going to rely on you to tell me you
14	Q Okay. Well, Just tell me a little bit	14	don't understand the question, not any of
15	about the case.	15	the lawyers around the table, okay?
16	A Just was the investigating officer on	16	A Okay.
17	it.	17	Q All right. You understand you're under
18	Q I see.	18	oath right now?
19	A Did the crash report.	19	A I do.
20	Q So you were essentially a witness in	20	Q And this is the same oath that you
21	that case?	21	would take at trial in this case?
22	A No.	22	A I do.
23	Q Doesn't matter. When was that	23	Q Okay. Is this an important oath you
24	deposition?	24	think?
25	A I don't recall when it was.	25	A Very important.

	Page 13		Page 15
1	Q Okay. Tell me why it's important.	1	A No.
2	A It's about the truth.	2	Q You attended the deposition of Deleon
3	Q As a police officer, are you aware of	3	McDuffie; is that correct?
4	the penalties for lying under oath?	4	A I did.
5	A I am.	5	Q Did you take any notes during his
6	Q What are the penalties?	6	deposition?
7	A You can face criminal -- criminal time,	7	A I did not.
8	criminal repercussions.	8	Q Did you take any notes after the
9	Q Perjury?	9	deposition?
10	A Yes.	10	A I did not.
11	Q Sir, do you have any vision problems?	11	Q Did you talk with anybody about his
12	A I do not.	12	deposition testimony?
13	Q Do you wear prescription glasses or	13	A No.
14	prescription contacts?	14	Q Have you reviewed the deposition
15	A I do not.	15	transcript of Breann Steele? That was the
16	Q Have you ever?	16	blond woman who was on the patio at the time
17	A I wear reading glasses. That's about	17	of your interaction with Thomas Yatsko.
18	it.	18	A No.
19	Q Okay. Are those prescription reading	19	Q Have you read her deposition?
20	glasses or --	20	A I have not.
21	A Yeah.	21	Q Has anyone told you what her testimony
22	Q They are. Okay. Do you use glasses	22	is?
23	for any other purpose other than reading?	23	A No.
24	A No.	24	Q Have you reviewed any documents related
25	Q Okay. Do you have any hearing	25	to this case in preparation for your
	Page 14		Page 16
1	problems?	1	deposition?
2	A No.	2	A No, I have not.
3	Q Have you ever had any hearing	3	Q Were you interviewed at any point by
4	problems?	4	the Cuyahoga County Sheriff's Office related
5	A No.	5	to the incident that occurred on January
6	Q Are you currently on any medication	6	13th, 2018?
7	that you think might affect your memory?	7	A No.
8	A No, I don't believe so.	8	Q You were not interviewed?
9	Q Are you on any medication that you	9	A I was not.
10	think might affect your ability to testify	10	Q Were you asked to be interviewed by
11	truthfully and accurately?	11	that office?
12	A No.	12	A Yes.
13	Q Okay. All right, sir, will you please	13	Q And what was your response?
14	tell me everything that you did to prepare	14	A By the advice of counsel, I declined.
15	for this deposition.	15	Q And how did you communicate to them
16	A I didn't do anything.	16	that you declined? Was this over the phone,
17	Q Did you meet with your lawyer?	17	e-mail or some other format?
18	A I met with my attorney, yes.	18	A I'm not sure how the attorney
19	Q Okay. And when did you meet with your	19	responded.
20	lawyer?	20	Q So you relied on your attorney to
21	A Today.	21	communicate to the sheriff's office?
22	Q Any other times?	22	A That's correct.
23	A No.	23	Q I understand. And what was the basis
24	Q Was anyone else present during your	24	for declining to be interviewed by the
25	meeting with your lawyer?	25	sheriff's office?

1 A Because of the ongoing investigation.
 2 Q The ongoing criminal investigation?
 3 A Correct.
 4 Q When was it that they reached out to
 5 you or your attorney to ask to interview
 6 you?
 7 A It was last year. I would say -- I
 8 would say the springtime.
 9 Q I'll press you a little bit. Could you
 10 be more precise in terms of giving me a
 11 month that you think that the sheriff's
 12 office reached out to you?
 13 A No, I'm sorry, I cannot.
 14 Q And how did they contact you?
 15 A Through the attorney.
 16 Q Mr. Leneghan?
 17 A No.
 18 Q Which attorney was it?
 19 A Bob Phillips.
 20 Q Was Bob Phillips an attorney provided
 21 to you through the FOP?
 22 A He is the FOP attorney.
 23 Q He is the FOP attorney?
 24 A Right.
 25 Q What does that mean? Does that mean

1 reached out to interview you with respect to
 2 the criminal investigation?
 3 A As far as I'm aware, yes.
 4 Q Okay. Have you been provided any
 5 documents related to that criminal
 6 investigation?
 7 A I have not.
 8 Q Do you have any idea what has happened
 9 with respect to that criminal
 10 investigation?
 11 A Yes.
 12 Q What is your understanding?
 13 A That the investigation is now with the
 14 Franklin County prosecutor's office.
 15 Q And are you aware of any action that
 16 the Franklin County prosecutor's office has
 17 taken with respect to the case?
 18 A I am not.
 19 Q Have you been contacted by them?
 20 A Again, through the attorney.
 21 Q Your attorney has been contacted by the
 22 prosecutor's office?
 23 A Correct.
 24 Q Same attorney?
 25 A Yes.

1 anytime a police officer might need an
 2 attorney, that would be the attorney
 3 representing them?
 4 A It could be him.
 5 Q Okay. When did Bob Phillips become
 6 your attorney with respect to this matter?
 7 A I would say probably 2002 when I became
 8 a sergeant.
 9 Q Okay. Let me ask the question a little
 10 bit better.
 11 When did Bob Phillips become your
 12 attorney with respect to the criminal and/or
 13 civil liability arising out of the incident
 14 on January 13th, 2018?
 15 A When the sheriff's department contacted
 16 him through the union.
 17 Q In the springtime?
 18 A Yes.
 19 Q Okay. So you did not have an
 20 attorney-client relationship with him with
 21 respect to the incident on January 13th,
 22 2018 before that point?
 23 A Correct.
 24 Q Was that the one and only time, as far
 25 as you're aware, that the sheriff's office

1 Q When was that? When did they reach out
 2 to your attorney?
 3 A I would say it was the first week of
 4 this year.
 5 Q And what was your attorney's response?
 6 A I believe his response was to them that
 7 I was not going to provide them with a
 8 statement.
 9 Q Do you know if they were asking for a
 10 written statement from you or whether they
 11 were asking to interview you or take your
 12 testimony under oath? Do you have any idea
 13 what they wanted?
 14 A I remember reading a voluntary
 15 statement. They asked me if I wanted to
 16 give a voluntary statement.
 17 Q And was it your understanding that that
 18 would be provided in writing, that you would
 19 write out your statement or that you would
 20 give it verbally in a setting like this?
 21 A I think either/or.
 22 Q So you didn't get into the details of
 23 it, they just asked for a voluntary
 24 statement and your attorney declined?
 25 A Right, yes.

1 Q And that's what you wanted, I presume?
 2 A Yes.
 3 Q Have you at any point watched the
 4 surveillance video from The Corner Alley
 5 from the night of the incident?
 6 A I have not.
 7 Q Has anybody told you what the video
 8 shows?
 9 A No.
 10 Q Have you been curious to know what the
 11 video shows?
 12 A I don't have an answer for that. I
 13 don't -- I've never thought about that.
 14 Q You don't have an interest in seeing
 15 what's on the video?
 16 A No.
 17 Q All right. You provided some written
 18 discovery answers in this case through your
 19 attorney, correct?
 20 A I did.
 21 Q Okay. Those were interrogatories that
 22 my office sent to you through your attorney,
 23 correct?
 24 A Correct.
 25 Q All right. And you provided answers to

1 Q Rob Tucker?
 2 A Rob Tucker. Sergeant Jason -- I can't
 3 recall his last name, and then there's a
 4 third sergeant. I can't recall the third
 5 sergeant's name.
 6 Q Anyone else from the Internal Affairs
 7 Division that you spoke to about this case?
 8 A No.
 9 Q When did you speak with these
 10 individuals about the incident?
 11 A It was only a few days after the
 12 incident.
 13 Q Where was it that you spoke with them?
 14 A It was at the Justice Center, in their
 15 offices.
 16 Q What did they ask you?
 17 A They asked me specific questions.
 18 Q And did you answer those questions?
 19 A Yes.
 20 Q Do you know if your conversation with
 21 these individuals, these investigators, was
 22 recorded either by video or audio or by
 23 stenographic means like a court reporter?
 24 A I believe by video and audio.
 25 Q Were you under oath at the time of this

1 those interrogatories related to this case,
 2 correct?
 3 A Yes.
 4 Q Okay. So I want to follow up on some
 5 of the answers you provided. So one of the
 6 interrogatories we asked was for you to
 7 identify people you've spoken to about the
 8 incident, and when I say "incident," you
 9 understand what I'm talking about, right?
 10 A Yes.
 11 Q Okay. The incident that happened at
 12 The Corner Alley, January 13th, 2018, right?
 13 A Right.
 14 Q Involving you and Thomas Yatsko, right?
 15 A Yeah.
 16 Q I just want to make sure we're on the
 17 same page. You told me in your discovery
 18 answer that you've spoken with CPD Internal
 19 Affairs investigators, so that's the
 20 Cleveland Police Internal Affairs
 21 investigators?
 22 A Yes.
 23 Q All right. Can you recall the names of
 24 the investigators that you spoke to?
 25 A It's Lieutenant Rob Tucker.

1 interview?
 2 A No, I don't believe so.
 3 Q Did you have an attorney present with
 4 you?
 5 A I did.
 6 Q Who was the attorney?
 7 A Bob Phillips.
 8 Q Okay. Have you ever reviewed the video
 9 or audio of your interview?
 10 A I have not.
 11 Q How long did this interview last?
 12 A I don't recall.
 13 Q I'm going to press you a little bit on
 14 that. Do you think it was longer than an
 15 hour?
 16 A Yes, I believe so.
 17 Q Do you think it was longer than three
 18 hours?
 19 A I don't know.
 20 Q Okay. But certainly longer than an
 21 hour?
 22 A I believe so, yes.
 23 Q So presumably they asked you a number
 24 of specific questions about the incident; is
 25 that fair?

	Page 25		Page 27
1 A Yes.		1 Q And the other person you identified is	
2 Q Did you prepare a written statement		2 the City of Cleveland stress consultant, Dr.	
3 before this interview?		3 Franklin. Is this somebody you are seeing	
4 A I did not.		4 related to this incident?	
5 Q Have you ever prepared a written		5 A Initially I saw her. I see someone	
6 statement about the incident?		6 else now.	
7 A No.		7 Q And what was the purpose of seeing Dr.	
8 Q So other than yourself, Bob Phillips,		8 Franklin?	
9 these three investigators, who else was		9 A Deal with the aftermaths of the	
10 present during the interview?		10 incident.	
11 A The FOP president, Brian Bentley,		11 Q Can you recall how many different times	
12 Captain Brian Bentley, and the FOP first		12 you met with Dr. Franklin?	
13 vice president, Lieutenant Jerry Zarlenga.		13 A Couldn't give you a number, but it's	
14 Q Anyone else?		14 numerous times.	
15 A No, I don't believe so.		15 Q When did you stop seeing Dr. Franklin?	
16 Q Have you had a conversation with anyone		16 A When I started seeing an outside --	
17 about your interview after it happened?		17 outside doctor.	
18 A No.		18 Q Can you give me a time frame?	
19 Q Did you sit for any other interview		19 A I'm sorry, I cannot.	
20 with anyone in any setting related to the		20 Q It was sometime last year that you	
21 incident other than that one that you just		21 switched from Dr. Franklin to an outside	
22 told me?		22 provider?	
23 A No.		23 A Yes.	
24 Q Okay. Some other individuals you		24 Q Do you think it was in the springtime,	
25 identified in your interrogatory responses		25 in the summertime?	
	Page 26		Page 28
1 that you spoke with about the incident		1 A If I could give you a specific time, I	
2 includes your FOP attorney, Bob Phillips,		2 would give it to you. I don't know it.	
3 FOP president, Captain Brian Bentley. Did		3 Q Okay. Who is the outside provider that	
4 you speak with Mr. Bentley outside of the		4 you now see?	
5 setting of that interview you just told me		5 A Dr. Eddie Myers.	
6 about?		6 Q And where does he practice?	
7 A No.		7 A He has an office over on Rocky River	
8 Q That was the one and only circumstance		8 Drive.	
9 in which you had a conversation with him at		9 Q And is that where you see him?	
10 that point?		10 A Yes.	
11 A Yes.		11 Q Are you still seeing him?	
12 Q Did you talk with him before the		12 A Yes.	
13 interview happened?		13 Q How often?	
14 A No.		14 A It varies.	
15 Q Did you talk with him after?		15 Q From what to what?	
16 A No.		16 A Usually once every week or once every	
17 Q What about FOP first vice president,		17 couple of weeks to more than one time, you	
18 Lieutenant Gerald Zarlenga, he was also		18 know, in those time frames.	
19 present at the interview?		19 Q So as frequently as once a week?	
20 A He was.		20 A Yeah.	
21 Q Did you talk with him before the		21 Q Have you been given a diagnosis, mental	
22 interview?		22 health diagnosis, related to this incident?	
23 A No.		23 A He has not given me a specific	
24 Q After?		24 diagnosis.	
25 A No.		25 Q Has any mental health provider given	

	Page 29		Page 31
1	you any specific diagnosis?	1	A No, I was not.
2	A No.	2	Q They were just trying to I guess
3	Q Are you obligated to see a stress	3	provide some support for you; is that fair?
4	consultant or is this something you've	4	A I can't speak for them, but...
5	chosen to do on your own?	5	Q That was your impression?
6	A I've chosen to do it on my own.	6	A Yes.
7	Q From the beginning, it was your choice	7	Q Did you know these officers?
8	or was it at the beginning something you --	8	A In passing.
9	A No, it's always been my choice.	9	Q But you can't recall who they were as
10	Q Before the incident, had you ever seen	10	we sit here?
11	any kind of mental health provider for	11	A I cannot, no.
12	anything?	12	Q All right. You told me in response to
13	A No.	13	another interrogatory your e-mail address,
14	Q Other than the individuals we talked	14	which is dgraziolli@gmail.com?
15	about, have you spoken with anyone else at	15	A Yes.
16	the Cleveland Police Department about the	16	Q Have you sent or received any e-mails
17	incident?	17	related in any way to this incident?
18	A No, I have not.	18	A From my attorney, yes.
19	Q Were you interviewed by anybody at the	19	Q Other than from or to your attorney?
20	scene of the incident?	20	A No.
21	A I was not.	21	Q Did you do anything to look in your
22	Q Were you interviewed by anybody at the	22	e-mail inbox or outbox to see whether you
23	hospital where you went from the scene?	23	have any e-mails related to the incident?
24	A No.	24	A I don't really understand.
25	Q Am I correct in understanding that from	25	Q Yeah. You just told me that the only
	Page 30		Page 32
1	the scene, you went to the University	1	e-mails you believe you have related to this
2	Hospitals?	2	incident are either to or from your
3	A Yes.	3	attorney.
4	Q Did you go anywhere in between?	4	A Okay.
5	A No.	5	Q My question is what did you do, what
6	Q And how did you get to the hospital?	6	steps did you take to verify that you don't
7	A EMS transported me.	7	have any other e-mails related to this
8	Q Were you accompanied by any officer?	8	incident?
9	A I was.	9	A I didn't take any other steps.
10	Q How many?	10	Q Okay. You know within gmail, you can
11	A I think two.	11	perform a search, right?
12	Q Do you recall their names?	12	A The e-mails on the phone, it's not
13	A I do not recall their names, no.	13	something I'm, you know, a hundred percent
14	Q Did they stay with you at the hospital?	14	versed on.
15	A Yes.	15	Q Okay. Well, something I need to know
16	Q What was your understanding of the	16	is if you have any documents, any e-mails,
17	purpose of them staying with you at the	17	not between you and your attorney, but that
18	hospital?	18	are related to this incident, okay? That's
19	A Something a policeman would do for	19	something I need to know, okay?
20	another policeman.	20	A Okay.
21	Q So you weren't under the impression	21	Q So I'll follow up with your attorney
22	that you were a suspect in any crime?	22	and you and he can undertake efforts to
23	A Absolutely not, no.	23	check your e-mail to make sure that you
24	Q You weren't in their custody, so to	24	don't have any documents, okay?
25	speak?	25	A Okay.

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Page 35

1 Q All right. At the time of this
 2 incident, you had one cell phone on you; is
 3 that right?
 4 A Yes.

5 Q It was your personal cell phone?
 6 A Yes.

7 Q And that was the cell phone ending in
 8 7901?

9 A Correct.

10 Q And your provider was Sprint?
 11 A Yes.

12 Q And that a Samsung 8S phone?
 13 A Yes.

14 Q Do you still have that phone?
 15 A Yes.

16 Q Okay. Did you send or receive any text
 17 messages on January 13th, 2018?
 18 A In general?

19 Q In general, yes.

20 A I don't recall if I did or not.

21 Q Have you done anything to see if you've
 22 sent or received text messages on that day?
 23 A No, I have not.

24 Q So as you sit here today, you don't
 25 know if you sent or received any text

1 they're named in this case is depending on
 2 what the court rules and what the jury
 3 finds, there may be circumstances under
 4 which The Corner Alley might be legally
 5 responsible if there's a judgment entered
 6 against you, okay?

7 A Okay.

8 Q All right. So is it fair to say that
 9 on January 13th, 2018, you were working for
 10 The Corner Alley?

11 A Yes.

12 Q Okay. What was your job title?

13 A I guess security.

14 Q You say you guess security. Why do you
 15 have doubts or uncertainty about what your
 16 job title was?

17 A As a policeman, you're viewed as
 18 security. As a policeman, I'm viewed as a
 19 policeman to myself, but to others, we are
 20 viewed as security.

21 Q Did Corner Alley tell you that your job
 22 title is security?

23 A No, they did not.

24 Q Did you ever have a conversation with
 25 Corner Alley about what exactly your job

Page 34

Page 36

1 messages on that day related to this
 2 incident, correct?

3 A Correct.

4 Q What about the following day, January
 5 14, 2018, any text messages about the
 6 incident?

7 A No.

8 Q Okay. So that's another thing I'm
 9 going to need you and your attorney to do is
 10 to look at your text messages from the 13th
 11 and the 14th and see if you have any text
 12 messages related to this incident, okay?

13 A Okay.

14 Q And if you do, produce them, okay.

15 A (Nodding).

16 Q All right, sir, are you good to keep
 17 going?

18 A I'm fine.

19 Q Okay. If you want to take a break at
 20 any point, you tell me so, okay?

21 A Yes.

22 Q So you understand that The Corner Alley
 23 is one of the named defendants in this case?

24 A Yes.

25 Q Okay. And one of the reasons that

1 title was?

2 A No.

3 Q You just had some general sense that it
 4 was to provide security at The Corner Alley?

5 A Yes.

6 Q And when you interacted with Thomas
 7 Yatsko in front of The Corner Alley, you
 8 were still on the job, correct?

9 MR. ROCHE: Objection.

10 Go ahead.

11 A Could you be more specific?

12 Q Yeah. You were still working security
 13 for Corner Alley at that time?

14 A Yes.

15 Q I mean, you didn't notify anybody at
 16 Corner Alley that you were going to be off
 17 the clock in terms of providing security for
 18 Corner Alley at the time that you interacted
 19 with Thomas Yatsko, correct?

20 A I didn't interact with anyone about
 21 any topic at The Corner Alley.

22 Q Yeah, no. I apologize if my question
 23 was not clear.

24 When you interacted with Thomas Yatsko
 25 outside of Corner Alley, okay, did you tell

Page 37

Page 39

1 anybody at Corner Alley that, "I'm going to
 2 be off the clock for a moment, I need to
 3 interact with this young man"? Did you say
 4 anything to that effect?

5 A I did not, no.

6 Q Okay. Now, The Corner Alley premises
 7 includes the inside where there's the
 8 bowling alley and the bar, correct?

9 A Yes.

10 Q And The Corner Alley included the patio
 11 area in front, correct?

12 MR. ROCHE: Objection.

13 A Yes.

14 Q All right. And even though it was cold
 15 outside on this particular date, you did see
 16 that there were some customers using the
 17 patio such as to smoke or to make a phone
 18 call, correct?

19 A I don't recall anybody being outside.

20 Q Okay. Well, you certainly saw Thomas
 21 Yatsko in front of the patio, right?

22 A Yes.

23 Q And you saw the blond woman, Breann
 24 Steele? She was in the patio, you saw her?

25 A I did not see her.

Page 38

Page 40

1 Q Okay.

2 A No.

3 Q All right. Your job was to provide
 4 security both inside The Corner Alley and in
 5 the outside vicinity, including the patio,
 6 if necessary?

7 MR. ROCHE: Objection.

8 A I guess, yes.

9 Q Okay. And when you interacted with
 10 Thomas Yatsko at the edge of The Corner
 11 Alley patio, were you partly motivated to
 12 keep Thomas Yatsko out of The Corner Alley
 13 to make sure he doesn't go back inside?

14 A I don't understand the "partly
 15 motivated" part of your question.

16 Q Right.

17 A I don't understand that.

18 Q Fair enough. And I appreciate you
 19 telling me if you don't understand my
 20 question.

21 Was one of your objectives in
 22 interacting with Thomas Yatsko outside of
 23 The Corner Alley is to make sure he didn't
 24 go back inside The Corner Alley?

25 A Yes.

1 Q And did you believe that that was part
 2 of your job responsibilities as security for
 3 The Corner Alley, to make sure Thomas didn't
 4 go back inside the bar?

5 A Yes.

6 Q Is it fair to say, sir, that if you
 7 weren't working security for the Corner
 8 Alley, you likely would not have been at
 9 that Corner Alley location that night?

10 A That's correct.

11 Q And, therefore, you likely would not
 12 have interacted with Thomas Yatsko,
 13 correct?

14 A That's correct.

15 Q And you likely would not have been
 16 carrying your gun on these premises,
 17 correct?

18 A If I wasn't there and if I didn't
 19 interact with him, would I have a gun on me?
 20 Is that the question?

21 Q Correct.

22 A If I was anywhere else other than
 23 there?

24 Q Sure, yeah.

25 A Not necessarily, no.

1 **police chief has to approve your secondary
2 employment?**

3 MR. PIKE: Objection.

4 Form.

5 A That's my understanding.

6 Q And the Director of Public Safety, does
7 he also have to approve secondary employment
8 for Cleveland police officers?

9 MR. PIKE: Objection.

10 Form, foundation.

11 A I'm not sure.

12 Q Was it your understanding that this
13 permission to work secondary employment
14 could be revoked at any time?

15 A Yes.

16 Q And did you have to get permission
17 every year that you work secondary
18 employment?

19 A Yes.

20 Q Did you have your permission to work
21 secondary employment at The Corner Alley
22 revoked at any point before January 13th,
23 2018?

24 A No.

25 Q When Cleveland police officers are

1 Q Anything else on your shirt that is
2 relevant?

3 A No.

4 Q Okay. Is this what you were wearing
5 on January 13th, 2018 when you were working
6 secondary employment for The Corner Alley?

7 A Yes.

8 Q Are Cleveland police officers required
9 to carry their Cleveland Police Department
10 issued firearms when they're working
11 secondary employment?

12 A Yes.

13 Q And were you doing so on the date of
14 the incident?

15 A Yes.

16 Q What type of weapon is it?

17 A It's a Glock model 17.

18 Q What about the magazines for that gun,
19 are those also issued by the police
20 department?

21 A Yes.

22 Q And the bullets inside those magazines?

23 A Yes.

24 Q What else are Cleveland police officers
25 required to carry on them while working

1 engaged in secondary employment, are they
2 authorized to wear their police uniform?

3 A Yes.

4 Q Are you wearing your police uniform
5 now?

6 A I am.

7 Q Is this the same uniform you wear when
8 you're on duty?

9 A Yes.

10 Q And is it the same uniform you wear
11 when you're working secondary employment?

12 A Yes.

13 Q Okay. And can you just describe for me
14 all the different badges and the insignia
15 you have on your shirt?

16 A Well, the badge would identify my rank,
17 Cleveland Police Sergeant. Obviously the
18 patches say "Cleveland Police" on them. The
19 sergeant's patch, the three stripes, is, you
20 know, synonymous with a sergeant's rank, and
21 these would be for every five years of
22 service.

23 Q So we know from those patches you've
24 been on the force at least 25 years?

25 A Correct.

1 secondary employment?

2 A A Taser, pepper spray, ASP baton.

3 That's pretty much it.

4 Q What about handcuffs?

5 A Oh, handcuffs, yeah. I'm sorry.

6 Handcuffs.

7 Q Did you have those items on you while
8 you were working secondary employment for
9 The Corner Alley on January 13, 2018?

10 A I did not.

11 Q Why not?

12 A I worked it before and never as so much
13 had an alter -- a verbal altercation with
14 anybody, so I was lax by not carrying those
15 things, lax in my mind.

16 Q Are you telling me that you have only
17 ever had a verbal altercation while working
18 secondary employment at The Corner Alley or
19 in your entire career working secondary
20 employment?

21 A Working there specific, there was no
22 problems whatsoever.

23 Q Where were these items? Were they at
24 home, in your car, at the district?

25 A I don't recall where they were.

	Page 45		Page 47
1	Q When did you start working for The	1	working secondary employment?
2	Corner Alley?	2	A I would say I don't know because it
3	A I think it would have been September of	3	would be specific to whatever I am faced
4	the previous year.	4	with or observe.
5	Q 2017?	5	Q There might be other responsibilities,
6	A I believe so.	6	you just can't call any specific ones to
7	Q While working secondary employment, are	7	mind; is that fair?
8	you still required to fulfill certain	8	A That's fair.
9	official responsibilities as a police	9	Q Did the Cleveland Police Department
10	officer as the circumstances may require?	10	ever provide you training regarding
11	MR. PIKE: Objection.	11	secondary employment?
12	Form.	12	A No.
13	A I guess I don't really understand. If	13	Q Did the Cleveland Police Department
14	you could be more specific. I don't really	14	ever provide you training on the rules and
15	understand.	15	regulations you must comply with while
16	Q Sure. Do you still have an obligation	16	working secondary employment?
17	to preserve the peace if you observe, say,	17	A Yes.
18	criminal activity while working secondary	18	Q Okay. And do you recall when you
19	employment?	19	received that training?
20	A Yes.	20	A Not specifically, no.
21	Q If you observe a crime being committed	21	Q Did you receive that training once or
22	while working secondary employment, do you	22	multiple times on a regular basis? Give me
23	still have an official responsibility to	23	an idea.
24	address that crime?	24	A It's hard -- it's a hard question to
25	A Yes.	25	answer.
	Page 46		Page 48
1	Q And to, if necessary, arrest the person	1	Q Okay. That's fair. What format was
2	committing the crime?	2	this training?
3	A Yes.	3	So let me ask it this way: The
4	Q So this is true regardless of whether	4	training on the rules and regulations that
5	you're technically on duty or off duty, you	5	govern your work while on secondary
6	still have those official responsibilities?	6	employment, did you get this training in a
7	MR. PIKE: Objection.	7	classroom setting, did you get it in some
8	Form.	8	kind of live interactive format? Do you
9	A I'm not specifically sure about the	9	recall the setting or the format?
10	"off duty" portion of your question.	10	A I do not.
11	Q Sure. Well, we don't have to use the	11	Q You are aware that there are specific
12	phrase "off duty," but regardless of whether	12	Cleveland Police policies related to
13	you're on duty as a police officer or you're	13	secondary employment?
14	working secondary employment, you still have	14	A I am.
15	to fulfill those official responsibilities	15	Q Okay. And you're familiar with those
16	we just talked about?	16	policies?
17	MR. PIKE: Objection.	17	A I am.
18	Form.	18	Q And you were responsible for following
19	BY MR. TOR:	19	those policies while on secondary
20	Q Is that fair?	20	employment, correct?
21	A The ones that you spoke about and I	21	A Yes.
22	answered, yes.	22	Q In addition, while working secondary
23	Q Are there any other official	23	employment, you are required to follow the
24	responsibilities you have to fulfill as a	24	Cleveland Police use of force policies,
25	Cleveland police officer even when you're	25	correct?

	Page 49		Page 51
1	A Correct.	1	comfortable using pepper spray? In other words, do you know how to use pepper spray as a police officer?
2	Q All right. We talked about some of the attire you had on at the time of the incident, but I want to make sure we cover all the different Cleveland issued equipment and attire you had on at the time.	2	A I would say yes.
3	So the pants you wore that night, were those Cleveland Police Department issued uniform pants?	3	Q When you're on duty, do you have pepper spray on your duty belt?
4		4	A No, I do not.
5		5	Q Okay. When you're on duty, do you have a Taser on your belt?
6		6	A It's not on the belt.
7		7	Q Where is it?
8		8	A It's carried -- I would carry mine in a pocket.
9		9	Q But it would be on your person?
10		10	A It would be, yes.
11		11	Q What about the baton, do you carry that when you're on duty?
12		12	A I do not, no.
13		13	Q Do you know how to use the baton?
14		14	A Yes.
15		15	Q Are all those items, the pepper spray, the baton, the Taser, are those all Cleveland Police issued?
16		16	A Yes.
17		17	Q So let me kind of circle back to an
18			
19			
20			
21			
22			
23			
24			
25			
	Page 50		Page 52
1	Q Did it say "police" or give any -- have any police markings on it?	1	earlier question. While you're on duty, tell me all the weapons that you do carry with you. Obviously your gun, right?
2	A It's exactly like this shirt, except it's a jacket, a heavy jacket. I believe it's called a cruiser jacket.	2	A It would be the ones that I mentioned.
3		3	Q The gun, the Taser?
4		4	A Taser.
5	Q Was it your understanding you had permission from the Cleveland Police Department to wear all of this attire while working at The Corner Alley?	5	Q What else?
6		6	A The ASP baton and the pepper spray and the handcuffs.
7		7	Q Okay. So you do carry that when you're on duty?
8		8	A I carry it with me, yes.
9		9	Q And again, you're comfortable using all those different weapons?
10		10	A Yes.
11		11	Q Have you ever used a Taser on an individual?
12		12	A I have not.
13		13	Q What about when you were trained on using the Taser, did you ever deploy it on any individual?
14		14	A No.
15		15	Q Okay. Have you ever used a baton on any individual?
16		16	A Not that I can recall, no.
17			
18			
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25			

	Page 53		Page 55
1	Q Pepper spray?	1	these individuals in a professional and reasonable manner, right?
2	A Pepper spray, yes.	2	A Yes.
3	Q How often have you used pepper spray as a police officer?	4	Q And you are expected and presumably trained on conflict management; is that fair?
4	A I would say only a few times.	5	A I don't know if we've been trained with that specific title.
5	Q You told me earlier that on the night of the incident, you were only carrying a gun, you weren't carrying any of your intermediate weapons, right?	6	Q Have you been trained on de-escalation techniques?
6	A That's correct.	7	A Yes.
7	Q And you told me that the reason you didn't carry these intermediate weapons is because you got a little bit lax because you didn't have any issues at The Corner Alley; is that correct?	8	Q How often do you receive training on de-escalation?
8	A That's correct.	9	A That's relatively new to the department.
9	Q Why then did you feel the need to carry a gun?	10	Q How new is it?
10	A I've always carried a gun no matter what the job.	11	A I would say within the last -- last year or so. I couldn't give you a date specific.
11	Q Did you think you'd ever have to use the gun?	12	Q It appears from your personnel file that you received de-escalation training in the fall of 2017; is that correct?
12	A No, absolutely not.	13	A Okay. I mean, I don't recall the specific training.
13	Q So you carried the gun as a matter of habit; fair to say?	14	Q Let me ask the question this way: At
	Page 54		Page 56
1	A It's not -- it's not because of habit.	1	some point prior to the incident, you had received de-escalation training; is that fair?
2	It's like you wearing a suit, putting a tie on.	2	A If it's in the personnel file, then we probably received it.
3	Q Part of your uniform?	3	Q As you sit here today, can you recall that training?
4	A Right.	4	A I cannot, no.
5	Q Part of declaring to the public, "I'm a Cleveland police officer"?	5	Q So you don't know whether it was quick training or long training, correct?
6	A Yeah, I guess, yeah. I think the uniform says that more, but...	6	A I don't know.
7	Q Okay. Part of your job as a police officer involved dealing with citizens who might be noncompliant; is that true?	7	Q You don't know whether it took 30 minutes or several days, correct?
8	A That's true.	8	A I do not know.
9	Q Who might be drunk or unruly, true?	9	Q And you can't recall any of the specifics of what you were taught during this training; is that fair?
10	A Mm-hmm, yes.	10	A That's fair.
11	Q Who might be disobedient or noncompliant, correct?	11	Q Can you recall the instructor?
12	A Yes.	12	A No.
13	Q And I take it in your 27-year career, is it 27 years?	13	Q Were you given any written material during this training?
14	A Yes.	14	A Again, I don't know.
15	Q I take it in those 27 years, you've dealt with such individuals; is that fair?	15	Q Well, we've talked about de-escalation. What does that term mean to
16	A That's fair.		
17	Q Okay. And you're expected to deal with		

	Page 57		Page 59
1	you as a police officer?	1	A It's more of a personal thing about
2	A It's got so many -- so many different,	2	getting close to somebody than being trained
3	I think, steps to it and they are, I feel,	3	that way.
4	specific to whatever you are dealing with.	4	Q What do you mean?
5	So to answer it in the way you're	5	A Like I wouldn't -- me, personally, I
6	asking me, I couldn't give you a specific	6	wouldn't get close to somebody. It's just,
7	answer.	7	I guess -- it's just the way that I'm made
8	Q Sure. I'll ask specific questions	8	8 up. It's not necessarily I've been trained
9	then, okay?	9	9 that way.
10	A That's fine.	10	Q You're just not comfortable getting
11	Q All right. One of the objectives in	11	close to another person; is that what you're
12	using de-escalation techniques is to reduce	12	saying?
13	or eliminate the need to resort to force,	13	A Right.
14	correct?	14	Q Okay. Well, were you trained by the
15	A Okay.	15	Cleveland Police Department that as an
16	Q Were you ever trained about that by the	16	officer, you should avoid using a harsh
17	Cleveland Police Department?	17	level of voice or tone while interacting
18	A Again, I don't recall the specifics of	18	with an individual?
19	the training.	19	MR. PIKE: Objection.
20	Q Were you trained by the police	20	Form, foundation.
21	department that de-escalation techniques are	21	A I don't recall being specifically
22	important in order to slow down a situation?	22	trained not to do that or to do it.
23	A See, the thing I'm having a hard time	23	Q Were you ever trained by the Cleveland
24	with is it's hard to answer your question	24	Police Department to avoid using swear or
25	because of, again, I refer back to something	25	curse words towards an individual?
	Page 58		Page 60
1	specific happening and a response to it. I	1	A Again, I don't recall being trained or
2	don't understand how to -- I don't know how	2	not trained.
3	to answer that to you.	3	Q Were you trained that as an officer,
4	Q Okay. Were you trained by the	4	you should take steps to calm and cool down
5	Cleveland Police Department that police	5	a situation when interacting with an
6	officers must take all reasonable steps to	6	individual?
7	de-escalate an incident and reduce the	7	A If I'm given the opportunity to, yes.
8	likelihood of having to use force?	8	Q Okay. But my specific question is
9	MR. PIKE: Objection.	9	whether you were trained by the police
10	Form, foundation.	10	department to do that.
11	A I would say if we are given an	11	A Again, I don't recall, you know,
12	opportunity to do that, yes.	12	specific black and white in front of me.
13	Q Okay. Is it your responsibility as a	13	Q Okay.
14	police officer to be proactive in reducing	14	A I don't recall that.
15	the severity of an encounter with a citizen	15	Q Were you trained by the police
16	so as to reduce the need to resort to force?	16	department that you should as an officer
17	A If I was given an opportunity to reduce	17	minimize the level of force that you have to
18	that, then I would, yes.	18	use against a suspect?
19	Q Okay. Were you trained that an officer	19	A Yes.
20	should avoid using aggressive body language	20	Q Okay. I'm going to go through some
21	towards a citizen?	21	de-escalation techniques. I want you to
22	A I don't recall that.	22	tell me if you've ever been trained by the
23	Q Were you ever trained that an officer	23	police department on how to use them, okay?
24	should avoid getting unnecessarily close to	24	A Okay.
25	a suspect?	25	Q Verbal persuasion?

	Page 61	Page 63
1 A I don't recall.		
2 Q Advisements, giving advisements or		
3 warnings to a suspect?		
4 A Yes. Okay, yes.		
5 Q When were you trained on that?		
6 A I would say through the course of my		
7 career.		
8 Q Were you trained on slowing down the		
9 pace of an incident as one of the possible		
10 de-escalation techniques?		
11 A I don't recall.		
12 Q Proactively creating a distance between		
13 yourself and the suspect?		
14 A I would say yes to that. Yes.		
15 Q Placing barriers between yourself and		
16 the suspect or the subject?		
17 VIDEOGRAPHER: Three		
18 minutes of tape.		
19 A Specifically, I don't recall that.		
20 Q Moving yourself to a safer place or		
21 safer position?		
22 A Yeah. Yes, I would say so, yes.		
23 Q Taking steps to avoid having a physical		
24 confrontation with the individual?		
25 A I don't recall that one specifically.		
	Page 62	Page 64
1 Q Were you trained to talk to individuals		
2 in a calm manner, in a normal tone of voice?		
3 A Not that I can recall.		
4 Q Were you trained that when trying to		
5 de-escalate a situation, an officer should		
6 ask questions rather than issue orders or		
7 commands?		
8 A Not that I can recall.		
9 VIDEOGRAPHER: We're off the		
10 record.		
11 - - -		
12 (Short recess to change tapes.)		
13 - - -		
14 VIDEOGRAPHER: We're back on		
15 the record. Tape two.		
16 BY MR. TOR:		
17 Q Okay. Let's talk about the use of		
18 force, okay?		
19 A Okay.		
20 Q Have you received training by the		
21 police department on use of force?		
22 A Yes.		
23 Q How often do you undergo use of force		
24 training?		
25 A I'd say once a year.		

	Page 65		Page 67
1	used by you as a police officer in order to	1	would feel comfortable deploying these
2	achieve a lawful objective?	2	things.
3	A Yes.	3	Q But now you don't feel as comfortable?
4	Q Such as to effect a lawful arrest, to	4	A If I was given the opportunity to use a
5	make a lawful arrest, correct?	5	technique like that, I would probably still
6	A That's one of the things, yes.	6	do it. I just don't know the outcome.
7	Q Another might be to gain control of a	7	Q Well, what is it that you do to stay in
8	noncompliant individual?	8	shape now?
9	A Yes.	9	A I go to the gym.
10	Q To prevent or terminate the commission	10	Q How often do you do that?
11	of a crime?	11	A I try three -- between three and five
12	A Yes.	12	times a week.
13	Q And you have been trained, I presume,	13	Q And what do you do? Do you just lift
14	on types of force that an officer can use	14	weights or do you do any aerobic activities?
15	that is less than deadly force?	15	A It's aerobic, cardio stuff.
16	A Yes.	16	Q What specifically do you do?
17	Q Okay. What are some examples?	17	A I walk on a treadmill, elliptical. I
18	A The use of the Taser or the pepper	18	try to lift some weights, but the age is
19	spray or the ASP baton.	19	hitting me.
20	Q Any others you can think of off the top	20	Q How much time do you spend in the gym?
21	of your head?	21	A It varies, you know, from like an hour
22	A I guess, you know, like, you know,	22	to maybe two hours.
23	hand-to-hand stuff. Hands-on I should say.	23	Q Do you have a workout buddy or someone
24	Hands-on.	24	you work out with?
25	Q Have you received hands-on training of	25	A No.
	Page 66		Page 68
1	the sort you're describing?	1	Q Which gym do you use?
2	A Yes.	2	A LifeWorks.
3	Q What about leg sweeps, is that a	3	Q Where's that located?
4	technique you could use short of using	4	A Middleburg Heights.
5	deadly force?	5	Q What time of day typically do you go to
6	A If you have the opportunity, yes.	6	the gym?
7	Q Or a take-down technique like tackling	7	A I would say, you know, in the
8	--	8	afternoon.
9	A Again, if the opportunity promotes	9	Q All right. Let's return to the topic
10	itself, yes.	10	of use of force, okay?
11	Q Using pressure point control?	11	A Okay.
12	A Yes.	12	Q Have you been trained that an officer
13	Q Issuing verbal commands?	13	has to consider his surroundings before he
14	A Yeah, yeah.	14	unholsters his gun?
15	Q Have you used any of these techniques	15	A I don't remember anything specific
16	in your 27-year career?	16	about surroundings.
17	A I would say, yes; yes, I have.	17	Q Okay. Have you been trained that you
18	Q And I think you told me you've been	18	as an officer have to consider your
19	trained on these various techniques, right?	19	surroundings before discharging your
20	A Yes.	20	firearm?
21	Q So you as a sergeant feel comfortable	21	A Yeah, yes. Yes. Yes, yes.
22	deploying these techniques?	22	Q Okay. And what were you told or
23	A The reason why I hesitate is when I	23	trained about that?
24	was younger, in better shape, I would agree	24	A I don't recall specifics about it.
25	that I could -- I would say yes, that I	25	Q How many times in your 27 years have

1 **you discharged your firearm aside from at**
 2 **the shooting range?**

3 A Once.

4 Q During this incident that occurred at
 5 The Corner Alley?

6 A That's correct.

7 Q Were you trained that deadly force may
 8 only be used when necessary?

9 A Yes.

10 Q Were you trained that deadly force may
 11 be used only if the subject poses an
 12 imminent threat of serious physical harm to
 13 you or another person?

14 A Yes.

15 Q Were you trained that deadly force is
 16 not permitted unless there are no other
 17 force options, techniques, tactics or
 18 choices available to you?

19 A Could you be more specific? I don't --
 20 I don't understand because I think the
 21 question -- the question doesn't address the
 22 incident.

23 Q Sure. We're talking in general. If
 24 the circumstances permit other options, in
 25 terms of techniques, in terms of tactics, in

1 A I cannot, no.

2 Q Were you trained that an officer is not
 3 allowed to crate a deadly encounter and then
 4 shoot his way out of it?

5 A I don't recall ever hearing that
 6 before.

7 Q Were you ever trained that retaliatory
 8 force is not allowed?

9 A Yes.

10 Q Were you trained that force may not be
 11 used to punish an individual for
 12 disrespecting a police officer?

13 A I don't remember that ever being
 14 something I read.

15 Q Nothing you read. Anything anyone told
 16 you at the police department?

17 A Not that I can recall, no.

18 Q Were you trained that before
 19 displaying or using a firearm, a police
 20 officer has to allow the individual an
 21 opportunity to comply?

22 A I do not recall reading that or that
 23 being told to me.

24 Q When you are working secondary
 25 employment, you are required to follow the

1 terms of your choices as a police officer,
 2 is deadly force still permitted?

3 A The problem I'm having is that the
 4 question you're asking me is more of a broad
 5 -- broad thing instead of specific to the
 6 time that the deadly force is deployed.

7 Q Okay. Let me ask this question: Have
 8 you ever been trained about this general
 9 rule by the Cleveland Police Department?

10 A I don't -- I don't recall.

11 Q As you sit here, you don't recall any
 12 such training?

13 MR. PIKE: Objection.

14 Form.

15 A That specific, no, I don't recall
 16 that.

17 Q Have you ever been trained that the use
 18 of deadly force in response to a non-deadly
 19 aggression is unlawful?

20 MR. LENEGHAN: Objection to
 21 the form of that question.

22 A I don't know. I don't know that I've
 23 been trained about that.

24 Q As you sit here, you can't recall any
 25 such training?

1 use of force policies issued by the police
 2 department, right?

3 A Yes.

4 Q Okay. Have you undergone any kind of
 5 tactical training as a police officer?

6 A Could you be more specific?

7 Q Like scenario-based training?

8 A Yes.

9 Q How often do you undergo scenario-based
 10 training?

11 A Generally that, anything along those
 12 lines would be done during in-service
 13 training, which is usually once a year.

14 Q And how long does the in-service
 15 training last?

16 A That -- that varies. It could last a
 17 whole week, it could last a day. It could
 18 last hours. It all depends on their -- when
 19 I say "their," I mean the curriculum of the,
 20 you know, in-service training.

21 Q Have you ever undergone scenario-based
 22 training involving a noncompliant or
 23 disorderly individual?

24 A Yes.

25 Q All right. And what techniques or

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<p>1 tactics did you use during that scenario to 2 diffuse the situation?</p> <p>3 A Officer presence.</p> <p>4 Q What else?</p> <p>5 A The verbal commands and then it would 6 -- it could escalate or it could not, 7 depending on, you know, the specific 8 scenario.</p> <p>9 Q And if it were to escalate, you could 10 use, say, one of your intermediate weapons?</p> <p>11 A You could.</p> <p>12 Q Okay. Were you -- have you ever been 13 provided self-defense training?</p> <p>14 A No, not that I can recall.</p> <p>15 Q Whether by the police department or 16 outside?</p> <p>17 A No.</p> <p>18 Q Have you ever done any martial arts?</p> <p>19 A I have not.</p> <p>20 Q Have you ever undergone hand-to-hand 21 skills training through the police 22 department?</p> <p>23 A If I did, it would have been in the 24 police academy and that's a long time ago 25 and I don't recall anything specific about</p>	<p>1 A Yes.</p> <p>2 Q -- course?</p> <p>3 A Yes.</p> <p>4 Q Are you CPR certified?</p> <p>5 A I don't believe I am. I don't believe 6 I am, no.</p> <p>7 Q Do you think you've ever been CPR 8 certified?</p> <p>9 A During those training periods, yes, but 10 I believe it's time-specific.</p> <p>11 Q So you'd undergo CPR training and you'd 12 get the certification and then it would 13 expire at a certain point?</p> <p>14 A I believe. Please don't quote me on 15 that, but I believe so.</p> <p>16 Q Okay. And then first aid 17 certification, did you likewise obtain that?</p> <p>18 A It would be the same -- same type of 19 training.</p> <p>20 Q Same situation. So you don't know as 21 you sit here today whether you still qualify 22 as being first aid certified?</p> <p>23 A Whether it's active or expired, I have 24 no idea.</p> <p>25 Q Okay. Is that a requirement as a</p>
Page 74	Page 76
<p>1 it, no.</p> <p>2 Q As a Cleveland police officer, are you 3 trained in rendering first aid?</p> <p>4 A Yes.</p> <p>5 Q Do you receive ongoing training for 6 first aid?</p> <p>7 A I wouldn't say ongoing.</p> <p>8 Q Have you undergone first aid training 9 more than once as a police officer?</p> <p>10 A Yes.</p> <p>11 Q About how many times have you undergone 12 that training?</p> <p>13 A Two or three times.</p> <p>14 Q In your 27-year career?</p> <p>15 A Correct.</p> <p>16 Q Do you recall the last time you 17 underwent that training?</p> <p>18 A I believe 2017.</p> <p>19 Q Have you ever been trained in rendering 20 CPR or performing CPR?</p> <p>21 A Yes.</p> <p>22 Q How many different times have you been 23 trained on CPR?</p> <p>24 A It's two or three times there as well.</p> <p>25 Q Would it be in the same training --</p>	<p>1 Cleveland police officer, that you have 2 active first aid certification?</p> <p>3 A I don't know because of the word 4 "active." I don't know if a card that says 5 it's good for one year is active or it's 6 expired, I don't know if that means, you 7 know, I don't do it no more.</p> <p>8 Q Okay. My question is do you know if 9 the police department requires that you have 10 an active first aid certification, whether 11 you do have that or not?</p> <p>12 A I do not know if they require it.</p> <p>13 Q Okay. And the same question for CPR, 14 any idea whether you're required to have an 15 active --</p> <p>16 A I do not know, believe me. I do not 17 know.</p> <p>18 Q All right. Have you ever been involved 19 in a physical fight with anyone prior to 20 January 13th, 2018?</p> <p>21 A With anyone?</p> <p>22 Q Yeah.</p> <p>23 A Yes.</p> <p>24 Q How many different times?</p> <p>25 A I would say one other time.</p>

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1	Q Tell me about that one.	1	Q And why is it that you're wearing this uniform during this deposition?
2	A 1992, I believe, and a bouncer at a nightclub assaulted me.	2	A No specific reason.
3		3	Q Are you on duty right now?
4	Q Okay. Did you press charges?	4	A I am not.
5	A I did.	5	Q Did you get clearance from the police department to wear your uniform and your gun during this deposition?
6	Q What happened with the criminal matter?	6	A I did not.
7	A I believe he pled to an assault.	7	Q Did you check whether this building is a no-firearm building?
8	Q What happened in terms of the fight? Did you guys exchange punches?	8	A I did not check it, no.
9	A I did not exchange any punches with him. It was him punching me.	9	Q Okay. And where do you keep your gun when it's not on you physically and you're not at home?
10	Q That was 1992. Any other times you had been in a fight?	10	A It would be at home.
11	A Not that I can recall, no.	11	Q Okay. Do you have anyplace in your car that you could put it securely?
12	Q Not with a neighbor or family member or fellow officer?	12	A No.
13	A No.	13	Q Do you have bullets in that gun right now?
14	Q Have you ever been violent with a family member?	14	A I do.
15	A Have not.	15	Q Okay. Let's talk a little bit more about your career as a Cleveland police officer. Do you remember your date of
16	Q Have you ever been violent around a family member?	16	
17	A No.	17	
18	Q Ever been violent towards anyone in	18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
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1	your neighborhood?	1	hire?
2	A No.	2	A January 6, 1992.
3	Q Ever been violent towards a colleague?	3	Q And before being hired, did you go through OPOTA training?
4	A No.	4	A Not before, no.
5	Q Have you ever threatened a colleague before?	5	Q Okay. But you did undergo -- you did go through the police academy?
6	A No.	6	A I did.
7	Q Ever threatened a family member?	7	Q When you were hired as a patrol officer?
8	A No.	8	A I was hired as a recruit.
9	Q Or a neighbor?	9	Q Okay. And when you started, what was your rank?
10	A No.	10	A When I started on January 6th, 1992?
11	Q In this 1992 incident with the bouncer, were you on duty as a police officer?	11	Recruit, police recruit.
12	A I was not.	12	Q Okay. And for how long were you a police recruit?
13	Q Were you working secondary employment?	13	A Six months.
14	A I was not.	14	Q And then what did you become?
15	Q By the way, we talked about your uniform. Are you carrying any weapons on you right now?	15	A Patrolman.
16	A I am.	16	Q Did you ever undergo any mental fitness or psychological testing at any point in your 27-year career?
17	Q Can you stand up and show me what weapons you're carrying?	17	A In the police academy, physical
18	A Sidearm.	18	testing.
19	Q Okay.	19	
20	A That's it. That's all I have.	20	
21		21	
22		22	
23		23	
24		24	
25		25	

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1	Q Physical testing. Any mental health testing?	1	A It was specific to, like, time cards.
2	A I don't believe so, not in the police academy, no. No.	2	Yeah, time cards.
3		3	Q Am I correct in understanding that you were falsifying time cards to indicate you were on duty when, in fact, you were at home?
4		4	A No, that's not it.
5	Q Any mental health testing after you got out of the police academy?	5	Q Well, what is it?
6	A No, nothing -- no.	6	A It didn't have -- I had permission to be at home, but it wasn't reflected on my time cards duty report.
7	Q Do you have to undergo physical testing on a regular basis as a Cleveland police officer?	7	Q Were you paid for the time you were at home?
8	A No.	8	A Yes.
9	Q Is that something you have ever undergone outside of the academy, have you ever undergone physical testing by the Cleveland Police Department?	9	Q Is that where the falsification stems from, that you were paid for time when you were at home when you were not supposed to be?
10	A I have -- no, I have not.	10	A You know, I'm not really sure of the, you know, the specifics of that. I'm not really sure.
11	Q Did you ever receive a promotion?	11	Q But you did plead guilty to falsification?
12	A I did.	12	A I did.
13	Q When did you receive your first promotion?	13	Q And what were you pleading guilty to
14	A December -- I believe it's the 9th, December 9th of 2002.	14	falsifying?
15	Q And what did you have to do to attain the promotion to sergeant?	15	A Again, it was a part of falsification that dealt specifically with report, writings, things of that nature.
16	A A written and verbal exam.	16	Q And specifically what was false about it?
17		17	A That it wasn't reflected on a duty report that I was at my house.
18	Q Did you pass the written and verbal exams the first time you took them?	18	Q I see. So you would fill out duty reports, but you wouldn't indicate that you were at home for a certain time period?
19	A I did.	19	A Yes.
20	Q Did you ever receive any kind of demotion?	20	Q And what was the outcome of the Cleveland Police Department investigation?
21	A I did.	21	Did they find that you had committed certain violations of rules or regulations?
22	Q When did that occur?	22	A Yes, but I don't know which ones specifically.
23	A 2013, I believe.	23	Q Do you recall how many different criminal charges were asserted against you in the criminal matter?
24	Q And what were the circumstances of the demotion?	24	A I do not.
25	A An investigation by an investigative reporter, Carl Monday.	25	Q Okay. And you were represented by a criminal defense lawyer in that proceeding?
			A Yes.
1	Q And what did his investigation reveal?		
2	A I was at home with the police car.		
3	Q And did this lead to any kind of criminal investigation?		
4	A Yes.		
5	Q Did the police department itself conduct its own investigation?		
6	A I'm sure they did.		
7	Q What was the outcome of the criminal matter?		
8	A I pled guilty to a misdemeanor falsification.		
9	Q What were you falsifying?		

Q What was the time period at issue here with respect to the false duty reports or time cards?

A What was the time frame?

Q Yeah. When did this occur?

A In 2012 I believe is when it occurred.

Q And do you know how it was discovered that you were at home when you were supposed to be on duty?

A Through the TV reporter's investigation.

Q My understanding is that the following criminal charges were asserted against you. Tell me if this is also your understanding. Theft in office; does that sound right?

A Yes.

Q Aggravated theft?

A I don't recall that.

Q Falsification?

A Yes.

Q Seven counts of tampering with records?

A For some reas -- yeah, okay. Yes, yes.

Q Dereliction of duty?

A I don't recall the dereliction of duty.

Q So I take it you didn't come forward to the police and tell them about this activity before you were discovered by Carl Monday?

A That's correct.

Q And so as a result of your activities for which you were criminally charged and ultimately pleaded guilty, you say you were demoted from sergeant?

A Yes.

Q From sergeant back to patrol officer?

A Yes.

Q What other punishments did you sustain as a result of this incident through the police department?

A I was suspended for 30 days.

Q With or without pay?

A Without.

Q And in terms of the criminal matter, what was your sentence?

A It was six months and a thousand dollar fine.

Q Can we agree that you pleaded guilty to

a crime of dishonesty?

A Given what is not on paper with the court and what I was there doing, I would say I wasn't being dishonest, no.

Q You don't believe you were being dishonest?

A I don't believe I was, no.

Q Okay. And so why did you plead guilty to falsification of records?

A Because, I mean, I had to. I had to plead to it. I couldn't just walk away from it. I had to take responsibility and I did.

Q Okay. And what were you taking responsibility for is what I'm trying to understand?

A I was taking responsibility for the way it looked.

Q And how do you think it looked?

A Bad, terrible.

Q But not dishonest?

A No.

Q Did you ever retain -- not retain. Did you ever have your sergeant status renewed?

A Yes.

Q When did that occur?

A I believe it was July of 2014.

Q And how were you able to get back your rank of sergeant after this incident?

A I don't understand the question.

Q Did you have to take the written and verbal test again?

A No.

Q Did you have to do anything to get your promotion back or did it come back automatically?

A It just -- it came back automatically.

Q And whose decision was that, as far as you're aware?

A I believe the Director of Public Safety.

Q In your position as a police sergeant, are you considered a supervisor?

A Yes.

Q Over how many officers would you consider yourself to be a supervisor?

A I would say 20 plus. I don't know the specific number.

Q Are they all within your same district?

A Same district and same shift.

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1	Q You work in the Fifth District?	1	A 48.
2	A That's correct.	2	Q And where do you spend the majority of
3	Q How many districts does the Cleveland	3	your time, at the district office or --
4	Police Department --	4	A Both. It varies, but in the building
5	A Five.	5	and then, of course, on the road as well.
6	Q When did you start working in the Fifth	6	Q And what -- under what circumstances
7	District?	7	would you be on the road, if one of your
8	A It would have been -- I want to say it	8	patrol officers has an issue or regular
9	was June of 2013.	9	patrol?
10	Q Shortly after the incident involving	10	A Both.
11	the time cards?	11	Q Okay.
12	A Yes.	12	A Both.
13	Q What district were you working in at	13	Q And do you have a schedule that
14	that time, the Fourth District?	14	dictates when you're going to be on patrol
15	A Yes.	15	versus when you're going to be in the
16	Q When did you first start working in the	16	office?
17	Fourth District?	17	A No.
18	A When I was first promoted.	18	Q And when you're on patrol, are you in
19	Q In 2002?	19	effect supervising another patrol officer?
20	A Yes.	20	A Not specifically, no.
21	Q Okay. And then before that point in	21	Q So you might be on patrol by yourself,
22	time, which district did you work in?	22	not necessarily with another officer?
23	A The Third District.	23	A I wouldn't be with a partner. I would
24	Q Did you work in any other district	24	be by myself.
25	other than the Third District?	25	Q Okay. And so can you give me a better
	Page 90		Page 92
1	A No. No.	1	sense of how many hours during a given week
2	Q Who determines what district an officer	2	you are on patrol?
3	is assigned to?	3	A I couldn't nail it down from one day to
4	A Chief of police.	4	the next.
5	Q So the chief of police is the one who	5	Q And do you have -- can you help me
6	determined that you would be assigned to the	6	understand what would determine whether
7	Fifth District in June of 2013?	7	you'd be on patrol on any given day?
8	A Yes.	8	A Mostly if you were needed somewhere in
9	Q And do you have an understanding why	9	a supervisory capacity.
10	the chief assigned you to that district at	10	Q Okay. So it's kind of on an as-needed
11	that time?	11	basis; is that fair to say?
12	A I do not, no.	12	A That's fair, yeah.
13	Q What are your duties as a police	13	Q As a sergeant, do you have the
14	sergeant?	14	responsibility to evaluate the performance
15	A Basically you make sure that the patrol	15	of other officers from time to time?
16	officers are answering the radio, responding	16	A Yes.
17	to the assignments, and if there's reports	17	Q And I take it you've received training
18	to be generated, make sure that they're	18	on how to effectively evaluate other
19	generating the reports.	19	officers?
20	You review those reports and then you	20	A I haven't received any training.
21	would forward them to any -- if there's an	21	Q Okay. So how did you learn how to
22	investigative unit that needs to follow up	22	evaluate other officers?
23	on them or, you know, whatever the case is.	23	A Could you be more specific on what type
24	Q On average, how many hours are you on	24	of evaluation you mean?
25	duty per week?	25	Q Sure. Well, let me ask you. Do you

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1 ever provide formal written evaluations for
 2 any patrol officers you supervise?

3 A You do, yes.

4 Q Okay. And so have you received any
 5 formal training in order to --

6 A To do that, no.

7 Q And so how have you learned to do that,
 8 just on the job?

9 A Yes.

10 Q Maybe talking with other officers,
 11 other sergeants, if necessary?

12 A Yes.

13 Q Have you yourself ever provided
 14 training to other officers?

15 A I have not, no.

16 Q All right. You told us about the Carl
 17 Monday incident, the falsification of
 18 records. Have you ever been disciplined at
 19 any other time during your 27-year career?

20 A Yes.

21 Q On how many different occasions have
 22 you been disciplined?

23 A I couldn't tell you a specific time or
 24 date or times.

25 Q Okay. I did receive some documentation

1 case.

2 A No, not at all.

3 Q Okay. It looks like you received a
 4 written warning for working secondary
 5 employment without approval from the police
 6 department. This is in 2011.

7 A I sure don't remember that.

8 Q Okay. In 2008, it appears you were
 9 given a written reprimand after engaging in
 10 improper procedures while investigating the
 11 use of non-deadly force by members under
 12 your command. Do you recall that?

13 A Yeah, I believe that was regarding the
 14 investigation over the timeliness of it.

15 Q And my understanding from your
 16 personnel file is that you admitted to some
 17 rule violations?

18 A Yes.

19 Q One of which was neglect of duty?

20 A Right, yes.

21 Q And incompetency or inefficiency in
 22 performance of duties. Does that sound
 23 right?

24 A Again, I, you know -- that's what year
 25 again?

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1 from the City of Cleveland and I'll go
 2 through what documents I have or what
 3 information I have and you tell me if this
 4 sounds accurate, okay?

5 A Fair.

6 Q So my understanding is that in 2014,
 7 you were demoted to patrol officer and
 8 suspended for 30 days for falsifying daily
 9 duty reports. Does that sound about right?

10 A Yes.

11 Q In 2012, you were given a written
 12 warning for failing to investigate a use of
 13 force incident involving another officer; is
 14 that right?

15 A Yes.

16 Q And then in 2011, you were disciplined
 17 for failing to appear in court for a case
 18 which resulted in the case being dismissed.
 19 Does that sound right?

20 A I do not recall being disciplined for
 21 anything like that.

22 Q Okay. Does that particular incident
 23 ring a bell?

24 A Appearing -- not appearing in court?

25 Q Yeah, not appearing in court for a

1 Q 2011 you were given a written
 2 reprimand.

3 A I don't remember the specifics of
 4 it.

5 Q Okay. Do you have any reason to doubt
 6 that that was the outcome of that
 7 discipline?

8 A I don't have any reason to doubt it,
 9 but I also don't remember it.

10 Q My understanding is that in 2006, you
 11 were given a verbal warning for being
 12 involved in an off-duty physical altercation
 13 with another member of the police force in a
 14 public place.

15 A Yes.

16 Q Okay. Earlier I asked you if you'd
 17 been in any fights before, but you didn't
 18 mention this one. Would this be considered
 19 a fight?

20 A On his part probably.

21 Q Okay. Well, tell me what happened.

22 A He assaulted me.

23 Q And did you throw any punches?

24 A I did not.

25 Q How many times did he attack you or

	Page 97	Page 99
1 punch you? 2 A I do not remember the time -- the 3 number of times because I was knocked 4 unconscious. 5 Q Did you instigate the fight? 6 A No. 7 Q Why was he attacking you? 8 A You'd have to ask him. I don't know. 9 Q Did you press charges? 10 A I did not. 11 Q Why were you disciplined if he was the 12 one that attacked you? 13 A It's what the department does. 14 Q So if you're an innocent victim of an 15 attack, you're going to be disciplined? 16 A I -- you know, I mean, I can't go about 17 -- I don't know how to answer that because 18 it's just the way that you're treated as a 19 policeman. 20 Q Is it your position that you were the 21 innocent victim of an assault? 22 A Yes. 23 Q Okay. And did you explain to your 24 supervisors that you were the innocent 25 victim and that you should receive no		1 A I do not. 2 Q Do you know how old he is, 3 approximately? 4 A No. 5 Q Where did this altercation take place? 6 A It was at a bar on Memphis and Fulton 7 area. 8 Q Do you know the name of the bar? 9 A It's no longer there. 10 Q Were you drinking that night? 11 A I don't believe I was when this 12 happened, no. 13 Q How long had you been at the bar before 14 the attack occurred? 15 A I don't recall. 16 Q Was anybody with you? 17 A No. 18 Q So it was just you and Thomas Barnes 19 at the bar or were there other patrons 20 there? 21 A There might have been others there. I 22 don't recall how many people or name 23 specific. 24 Q Did you exchange words with Thomas 25 before he attacked you?
1 discipline for this incident? 2 A I don't remember specifics back to 3 2006. 4 Q Did you receive any medical attention 5 related to that incident? 6 A Yes, I believe I did, yes. 7 Q What kind of medical attention did you 8 get? 9 A I want to say that I was just treated 10 -- treated and released for maybe some -- 11 for stitches. I think I got stitches. 12 Q Do you remember where you were 13 treated? 14 A Metro, I believe. Metro. 15 Q What was the name of the officer that 16 you claim assaulted you? 17 A Thomas Barnes. 18 Q Is he still with the Cleveland Police 19 Department? 20 A Yes, I believe he is. 21 Q Do you know what his rank is? 22 A I do not. 23 Q Does he work in your district? 24 A He does not. 25 Q Do you know what district he works in?	Page 98	1 A Just discussion, not words. 2 Q What was the discussion about? 3 A I don't recall. It's so long ago, I 4 don't recall it. 5 Q Did you make any documentation related 6 to the incident? 7 A I don't believe so, no. 8 Q Did you report it to anyone at the 9 police department? 10 A I didn't report it specifically, but it 11 was reported. 12 Q Do you know by whom? 13 A I do not know by whom, no. 14 Q Do you know if Thomas Barnes reported 15 it? 16 A I don't know. 17 Q Was a hearing ever conducted by the 18 police department about the matter? 19 A I don't remember attending one. 20 Q Okay. Were you represented by a 21 lawyer? 22 A No, I don't believe so. 23 Q Or a member of the FOP? 24 A Again, I don't remember being 25 represented or being at anything.

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1 Q After you were issued a verbal warning 2 for this incident, did you file a grievance 3 through the union? 4 A No. 5 Q Did you do anything to contest the 6 discipline you received for this incident? 7 A No. 8 MR. TOR: How much 9 longer do we have on the tape? 10 VIDEOGRAPHER: 15 minutes. 11 BY MR. TOR: 12 Q I understand you've been involved in a 13 number of different lawsuits over the years; 14 fair to say? 15 A I don't know. 16 Q Okay. We'll go through some of these. 17 I see four different divorce proceedings. 18 A Four? 19 Q Yeah. It may look like four, but the 20 divorce proceeding filed in 1999 with your 21 first wife, Kristine, and you told me 22 earlier you were divorced from her as of 23 2000? 24 A Yes. 25 Q Okay. It looks like maybe you filed a		1 proceeding? Was it before or after the 2 incident? 3 A It was before, I believe. 4 Q Like a few days before? 5 A Oh, no. I don't know. I would say 6 months before. 7 Q Okay. Did you give your second wife 8 any reason to think you were a violent -- 9 A No. 10 Q -- individual? 11 A No. 12 Q Do you know if she asserted any claims 13 against you that you were abusive or 14 violent? 15 A No. 16 Q I see there's some civil matters in 17 which you were a named party. There's a 18 1994 case where the other side was Shark 19 Club? 20 A That's the bouncer. 21 Q So you sued the bouncer related to that 22 incident? 23 A Sued the club I thought. 24 Q You sued the club. Okay. So you sued 25 the club because of the incident related to
1 divorce proceeding and she also filed a 2 divorce proceeding at the same time? 3 A I don't know. 4 Q Do you know if she made any claims 5 against you that you were in any way violent 6 or abusive towards her? 7 A I don't believe she did. I don't 8 remember. 9 Q Okay. Have you ever given her a reason 10 -- did you ever give her a reason -- 11 A No. 12 Q -- to think that you were a violent 13 person? 14 A No. 15 Q All right. And then you told me you 16 were divorced from your second wife, Lanett, 17 sometime in 2018; does that sound right? 18 A Yes. 19 Q When did this divorce occur relative to 20 the incident we're here to talk about on 21 January 13, 2018? 22 A It was a dissolution finalized on 23 Valentine's Day of last year. 24 Q And do you remember when you first 25 received notice of the filing of a divorce	Page 102	1 the bouncer? 2 A Correct. 3 Q What was the outcome of that lawsuit? 4 A There was money awarded. 5 Q To you? 6 A Yes. The amount, I can't recall the 7 amount. 8 Q Okay. How far along in the case did 9 you all get before there was a resolution? 10 A I believe that it went -- it was in 11 court, ready for trial. 12 Q Did you have your deposition taken? 13 A I don't believe so. I don't recall 14 being -- being -- having it taken. 15 Q Do you recall who represented you, what 16 lawyer represented you in that lawsuit? 17 A No. 18 Q I see there's a lawsuit filed on your 19 behalf in 2000 against the RTA. 20 A RTA? Oh, I was hit by a bus while I 21 was working. 22 Q Oh, okay. Where did this occur? 23 A On Superior. Superior and almost like 24 how Huron and Superior, even though they 25 don't technically meet, they meet. Over in

	Page 105		Page 107
1	that area.	1	A It's not a refinance. It would be --
2	Q And what were your injuries?	2	what's the term? Oh, boy. It was sold from
3	A Back injury is all I can really	3	them to another mortgage company, but I
4	remember.	4	don't know what the exact term of the deal
5	Q How bad was the injury?	5	was.
6	A You know, hospitalized, but then	6	Q And do you have any recollection of why
7	treated and released. Nothing -- nothing,	7	you were sued?
8	you know, long-term.	8	A No, I do not.
9	Q And you filed a lawsuit against RTA.	9	Q What happened with that case?
10	Did you recover any money?	10	A I don't remember it and, I mean, I
11	A I believe there was some money	11	still have the house, so I don't know the
12	recovered, yes. Yes, there was, yes.	12	outcome.
13	Q Did you make a Workers' Compensation	13	Q Do you own any other real estate
14	claim?	14	property?
15	A I believe so, yes.	15	A I do not.
16	Q And then I see you filed a civil	16	Q Now, you told me about the Workers'
17	lawsuit in 1996 against your employer, the	17	Comp claim you believe you filed with
18	City of Cleveland. What was that case	18	respect to the bus incident. Prior to the
19	about?	19	incident that occurred at The Corner Alley,
20	A I don't recall ever filing anything	20	had you ever filed a Workers' Comp claim?
21	against the city.	21	A Yes.
22	Q Another lawsuit, civil lawsuit filed by	22	Q How many different times?
23	you in 1997, also against the City of	23	A Not many, but specific number, I
24	Cleveland. Does that ring a bell?	24	couldn't tell you a number.
25	A Hmm-mm, not at all.	25	Q More than three?
	Page 106		Page 108
1	Q There's some cases filed by the Ohio	1	A Been pretty fortunate to where I
2	Department of Taxation.	2	haven't really been injured a lot, so I
3	A Yeah, I owed taxes.	3	would say I don't know. I don't -- I
4	Q Back taxes?	4	honestly don't know the number. I could say
5	A Yeah. They've since been paid, the	5	three, it might be six. I don't know that.
6	taxes have been.	6	I can't remember right now. I don't think
7	Q Was it that you were not reporting all	7	it's six, but I don't know if it's three.
8	your income?	8	Q Okay. So let's talk in terms of
9	A No.	9	injuries that you sustained while on the
10	Q What were the circumstances?	10	job. So the bus incident --
11	A Just owing more than I could pay at the	11	A Right.
12	end of the year, so you get involved with	12	Q -- involving the RTA. You made a
13	attorneys like you gentlemen, you have to	13	Workers' Comp claim for this incident that
14	pay, pay monthly down until it's gone.	14	occurred at The Corner Alley, right?
15	Q Have you ever failed to fully report	15	A Yes.
16	all of your income for any tax year?	16	Q Tell me about other incidents where you
17	A No.	17	believe you were injured on the job.
18	Q 2013, looks like you were a defendant	18	A I had the tendons in one of my fingers
19	in a civil lawsuit in which Ocwen Loan	19	-- I don't know what the word would be.
20	Servicing was the plaintiff?	20	Obviously, they can't be broken I don't
21	A That's -- that's got to be with the	21	think.
22	house when I -- I think they were -- they	22	Q How did that happen?
23	are or they were a mortgage type thing and I	23	A It happened after a vehicle pursuit
24	re --	24	when myself and a large number of officers
25	Q Financed?	25	were fighting with the suspect, I believe,

	Page 109	Page 111
1	after a foot chase, but I don't know what 2 year that happened or anything about that, 3 you know, and -- Q Do you recall getting any medical 4 treatment? 5 A I believe, I believe so. I went to -- 6 probably would have went to Charity Hospital 7 at that time because that's where -- I was 8 in the Third District at that time I 9 believe. Q Did you have to take time off of work 10 for your injury? 11 A I don't think so. Q Were you involved in the struggle or 12 the scuffle with this individual? 13 A No, the other officers were. I 14 remember it being icy and -- like 15 ice-covered area where we were at and I 16 remember falling, injuring my hand. Q I see. So you fell and that's how you 17 injured your hand? 18 A Right. Q Okay. Tell me about the other 19 incidents where you believe you were injured 20 on the job.	1 Q Do you think there may have been more? 2 A Again, not really sure. 3 Q Is there any way you could find out if 4 you had other Workers' Comp claims? 5 A I wouldn't know where to start. 6 Q Okay. When you had the Workers' Comp 7 claims, did you have a lawyer representing 8 you? 9 A Yes. 10 Q Who was the lawyer or lawyers? 11 A George Mineff, I believe. 12 Q George? 13 A Mineff. He's represented me on those. 14 Q Were you ever denied a Workers' Comp 15 claim? 16 A No. 17 Q Did you ever have any type of personal 18 injury other than what we've already talked 19 about? 20 A Not that I can recall, no. 21 Q Has anyone ever filed a restraining 22 order against you? 23 A Not that I can recall, no. 24 Q Or a protective order? 25 A No.
1	A I want to say a car accident, I think, 2 where we were hit from behind, like, you 3 know, with whiplash. Q Do you remember what year that happened 4 in? 5 A No. This is -- these incidents would 6 be in the '90s, the early '90s, you know. Q You said "we." Was somebody else in 7 the car with you? 8 A Again, back then, I worked with a 9 partner, but who it was, I have no idea. Q How many different partners have you 10 had over the years? 11 A Oh, boy. Do you want a number? Q Yeah. 12 A 20, 25 guys, girls. Q Okay. All right. Any other incidents 13 where you were injured on the job? 14 A Not that I can recall, no. Q So you've told me about three that you 15 do remember in addition to the one that 16 happened at The Corner Alley, right? 17 A Yeah. Q So at least four Workers' Comp claims? 18 A Okay.	1 VIDEOGRAPHER: Three 2 minutes of tape. 3 MR. TOR: All right. 4 Let's take a break. 5 VIDEOGRAPHER: We're off the 6 record. 7 - - - 8 (Short recess to change tapes.) 9 - - - 10 VIDEOGRAPHER: Tape three. 11 We are back on the record. 12 BY MR. TOR: 13 Q All right, sir, we're going to 14 continue. 15 As of the date of the incident, January 16 13th, 2018, did you have any medical 17 conditions for which you were being actively 18 treated by a doctor? 19 A No. Q Were you on any prescription 20 medication? 21 A Yes. I take high blood pressure and 22 cholesterol medication. Q Other than high blood pressure and 23 high cholesterol, did you have any other
1	Page 110	Page 112

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<p>1 medical conditions or issues at the time of 2 the incident?</p> <p>3 A No.</p> <p>4 Q Had you ever had any surgeries before?</p> <p>5 A Yes.</p> <p>6 Q How many different surgeries?</p> <p>7 A One.</p> <p>8 Q And what was it?</p> <p>9 A To repair a herniated disc in January 10 of 2017.</p> <p>11 Q Do you know what caused the herniated 12 disc?</p> <p>13 A I believe the doctor told me just old 14 age.</p> <p>15 Q Did you make a Workers' Compensation 16 claim?</p> <p>17 A No.</p> <p>18 Q Did you file any lawsuit related to 19 that?</p> <p>20 A No.</p> <p>21 Q Have you ever filed for disability?</p> <p>22 A I have not, no.</p> <p>23 Q When did this surgery take place?</p> <p>24 A January of 2017.</p> <p>25 Q Okay. I saw in your medical records</p>	Page 114	<p>1 Q Were you coming off work?</p> <p>2 A Yes. Yes.</p> <p>3 Q Were you on duty -- were you coming off 4 work for the police department or were you 5 coming off some kind of secondary 6 employment?</p> <p>7 A It wouldn't have been for the city. It 8 had to have been secondary employment, but 9 where I was coming from, I don't recall.</p> <p>10 Q Did you have any alcohol in your 11 system?</p> <p>12 A No.</p> <p>13 Q Any drugs in your system?</p> <p>14 A No.</p> <p>15 Q Were you taken to a hospital from the 16 scene?</p> <p>17 A Yes.</p> <p>18 Q Do you know what hospital it was?</p> <p>19 A Metro I believe.</p> <p>20 Q Were you treated and released?</p> <p>21 A I was kept overnight.</p> <p>22 Q And how did the doctors treat your 23 injury?</p> <p>24 A I don't think they did anything 25 specific to me. The only thing that I</p>
<p>1 reference to a traumatic subarachnoid 2 hemorrhage in 2013. Do you know what that's 3 about?</p> <p>4 A I was in a car accident.</p> <p>5 Q Is that the car accident you were 6 telling me about before where you were 7 rear-ended?</p> <p>8 A No. I was -- no.</p> <p>9 Q You were not working at that time?</p> <p>10 A I was not working, no.</p> <p>11 Q Okay. Well, when did this car crash 12 take place?</p> <p>13 A I want to say it was October of '13.</p> <p>14 Q Where did it take place?</p> <p>15 A Memphis, West 58th, I think, somewhere 16 in that area, right around there, 57th, 17 58th.</p> <p>18 Q Tell me about the crash. What 19 happened?</p> <p>20 A Lost control of my vehicle and hit a 21 tree.</p> <p>22 Q No other cars were involved?</p> <p>23 A No.</p> <p>24 Q What time of day was this?</p> <p>25 A Say night.</p>	Page 116	<p>1 remember being treated for a broken 2 wrist; fractured wrist I should say.</p> <p>3 Q Your left wrist?</p> <p>4 A I think so, yeah.</p> <p>5 Q What kind of fracture was it? Did they 6 tell you?</p> <p>7 A No idea.</p> <p>8 Q Did you have to miss any work?</p> <p>9 A I don't recall missing any work, no.</p> <p>10 Q Can you just show me where on your 11 wrist the fracture occurred?</p> <p>12 A I mean, it was cast. I think it was 13 cast, you know, in the hand and wrist area, 14 maybe a little bit past it.</p> <p>15 Q How long did you wear the cast for?</p> <p>16 A I don't know. Six to eight weeks. I 17 don't know how long -- however long you have 18 to wear it.</p> <p>19 Q Were you able to perform your regular 20 duties as a police officer during the time 21 you were wearing --</p> <p>22 A Yes.</p> <p>23 Q Were you on any restricted duties?</p> <p>24 A I don't believe so, no.</p> <p>25 Q Did you undergo any surgery for the</p>

	Page 117		Page 119
1	fracture?	1	A No.
2	A No.	2	Q And when was the last time you drank alcohol before the incident?
3	Q Was anyone in the car with you at the time?	3	A I'm not that big a drinker. I couldn't even tell you when.
4	A No.	4	Q I do have a few follow-up questions based on some of the topics we covered before.
5	Q Who is your family physician or primary care physician?	5	The altercation at the bar that involved Thomas Barnes, the other officer, were you or was he in police uniform at the time of the incident?
6	A I had one, but his license has been revoked, so now I go to Metro.	6	A No.
7	Q Who do you see there? Any doctor in particular?	7	Q Did you or he have a firearm on you at the time?
8	A Dr. D'Onofrio I think her name is. I only saw her one time.	8	A I know I didn't.
9	Q Was it before or after this incident?	9	Q Did anybody -- did either of you draw a firearm during the altercation?
10	A After.	10	A I know I didn't.
11	Q Who was prescribing you the blood pressure and cholesterol medication as of the time --	11	Q Did he?
12	A That would have been Dr. Kavlich who had his license suspended, revoked, I don't know which it is.	12	A Not that I recall.
13	Q I see. So Dr. Kavlich was your primary care physician until he had his license taken away?	13	Q Going back to this Carl Monday investigative reporting incident, you told me, I think, that you had permission to be at home?
14	A He was, yes.	14	
	Page 118		Page 120
1	Q Do you know how soon before the incident you last saw him, Dr. Kavlich?	1	A I did.
2	A No.	2	Q Okay. Who gave you that permission?
3	Q Where did he practice?	3	A It would have been my lieutenant.
4	A Berea; Berea, Ohio.	4	Q Lieutenant -- what's his or her name?
5	Q Was he affiliated with any hospital that you're aware of?	5	A Anthony George.
6	A Not that I'm aware of, no.	6	Q Did Lieutenant George defend you, stand up for you in this case, either the criminal case or the police investigation, and say actually he had permission to be at home?
7	Q Was he the last doctor you saw before the incident?	7	A No, he did not.
8	A Before which incident?	8	Q Okay. And did you feel betrayed by that?
9	Q The Corner Alley incident.	9	A Not at all.
10	A Yes.	10	Q Okay. Well, wouldn't you expect him to tell the truth if you had permission to be at home so that you wouldn't be accused of something you don't think you did?
11	Q So you told me as of the date of that incident, you had blood pressure medication and cholesterol medication. Did you take any over-the-counter drugs that day?	11	A If he was able to, he would have.
12	A Not that I recall taking, no.	12	Q Well why do you think he was not able to?
13	Q And did you consume any alcohol that day, January 13th --	13	A He's dead.
14	A I did not.	14	Q Okay. When did he die?
15	Q Did you consume any other drugs other than the two --	15	A I was still in the Fourth District.
16	A No.	16	It's got to be -- it's got to be 2012.
17	Q -- prescribed drugs?	17	Q Before or after your activities were

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1	uncovered by Carl Monday?	1 A He is.
2	A He died I want to say after, after I	2 Q What's his name?
3	think. I think. I couldn't give you	3 A Herman Graziolli.
4	specific dates.	4 Q Where does he live?
5	Q Is there anyone else that can	5 A He lives in Brook Park.
6	corroborate --	6 Q And did he ever live with you?
7	A Not to my knowledge, no.	7 A No.
8	Q -- your claim that Lieutenant George	8 Q So why did you have to go home to check
9	gave you permission?	9 on your father if he didn't live with you?
10	A Not to my knowledge, no.	10 A Because he was at my house.
11	Q So just you and Lieutenant George, who	11 Q So he was at your house, but not living
12	is deceased, those are the only two people?	12 at your house?
13	A Yes.	13 A Correct.
14	Q Now, why were you given permission by	14 Q He would go to your house during the
15	Lieutenant George to go home?	15 day?
16	A I explained to him why I had to go	16 A Correct.
17	there and he gave me permission to go there.	17 Q How did he get to your house?
18	Q What was your explanation?	18 A He would walk.
19	A I was taking care of my father.	19 Q How close did he live to you?
20	Q And what was your father's condition	20 A I would say at the time, five or six
21	that required that you provide care?	21 blocks away.
22	A My father has anxiety and depression	22 Q And he was able to walk by himself to
23	issues.	23 your house?
24	Q Did you request leave, family leave, in	24 A Yes.
25	order to take care of your father?	25 Q And so it was anxiety and depression
	Page 122	Page 124
1	A I did not.	1 you say your father had that required you to
2	Q Why not?	2 check on him and provide care for him?
3	A I don't know. I didn't think -- just	3 A Right.
4	didn't -- never occurred to me to even think	4 Q And did he ever file a claim through
5	about that.	5 Social Security or any other agency?
6	Q Okay. So instead, you asked permission	6 A No, I don't believe so.
7	from Lieutenant George to take care of your	7 Q And how old is your father?
8	father at home?	8 A 75.
9	A Yes.	9 Q Is he seeing any doctors or healthcare
10	Q And how often did you go home to take	10 providers to treat these conditions?
11	care of your father while you were still on	11 A To my knowledge, no.
12	duty?	12 Q Has he ever?
13	A Usually once during my shift.	13 A I don't know.
14	Q For how long?	14 Q I mean, it sounds like you were
15	A Varied.	15 providing some care to him. Is that
16	Q As little as half an hour?	16 something you think you'd know if he was
17	A Less than that.	17 actually going to see a healthcare provider?
18	Q Up to?	18 A Not necessarily.
19	A Make sure he's getting something to	19 Q And how much time would he spend at
20	eat, something to drink, and then I would	20 your house every day?
21	leave.	21 A That would vary as well. Could be
22	Q Okay. Would you stay longer than an	22 there for moments to, you know, the entire
23	hour?	23 day.
24	A At times I believe I did, yes.	24 Q And did you document any of this
25	Q And is your father still alive?	25 information when you were --

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1	A I did not.	1	Q Do you recall when you first started working secondary employment?	
2	Q Did you explain any of this to the committee or the group at the police department that investigated the matter?	2	A As soon as I could.	
3		3	Q Do you remember what year that was?	
4		4	A Probably 1992.	
5	A No.	5	Q And have you always worked secondary employment since then?	
6	Q So this is the first time you're telling anybody about this?	6	A Yes.	
7	A Yeah.	7	Q And why is it that you work secondary employment?	
8	Q And how long did this go on for? How long were you going home to check on your father while you were on duty?	8	A The money.	
9	A A week or so, maybe a little bit longer	9	Q What percentage of your income in a given year is derived from secondary employment?	
10	than a week.	10	A I couldn't break it down that way. I	
11	Q And why just the week?	11	never -- never, you know, looked at it that	
12	A Because he was feeling better and	12	way.	
13	wasn't coming by anymore.	13	Q Where are some of the establishments or companies for which you have worked secondary employment?	
14	Q So he was just feeling bad for a week, you checked on him and you happened to get --	14	A I mean, I worked over between the Q and the Progressive Field, I worked Tower City,	
15	A I don't know that he was -- I'm not	15	I worked all kinds of construction jobs,	
16	him. I can't say that he was just feeling	16	standing over a hole, directing traffic. I	
17	bad for a week. I'm talking about when he	17	worked just about anything.	
18	was at my house.	18		
19	Q So he was only at your house for just a one week period of time?	19		
20		20		
21	A Well, give or take days. You know, I'm	21	Q At any given week, how many hours would you say you're working secondary	
22	not saying it was seven days, seven days,	22	employment?	
23	that's it.	23	A I would say upwards of 28, somewhere	
24	Q So give or take a week is --	24	around that time frame.	
25	A Right.	25	Q Around 28 hours per week?	
	Q And it was during that time period that you would come home to check on him?		A Yeah, somewhere around there, give or	
	A Correct, yes.		take.	
	Q And you just happened to be caught by Carl Monday as an investigative reporter?		Q And this is in addition to the 48 hours you work regular duty?	
	A Yes.		A Yes.	
	Q Okay. All right. Let's talk about your secondary employment, okay?		Q Let me just talk a little bit about your shift or your work schedule as a police officer. Have you had a regular schedule over the years as a police officer?	
	A Okay.		A It's not regular. It's -- from 1992 to	
	Q You answered an interrogatory that I had sent to your lawyer and in response, you told me that you've worked hundreds of special duty assignments. Does that sound right to you?		17	'94, we rotated shifts, so every 30 days, they would switch.
	A (Nodding).		Q And then going forward after 1994?	
	Q Yeah?		A They were specific to day shift,	
	A A lot of them, yes.		afternoon shift or night shift, and I've	
	Q And this has been over the past 27 years?		been on all of them.	
	A Yes.		Q And so as of, say, January of 2018, about a year ago, what was your --	
			A Day shift.	

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1	Q Day shift. And what are the hours?	1	A I go to -- I've had family friends do
2	A Again, it would vary. They start	2	it, and I think that's the last few years
3	either at 6:00 a.m., 7:00 a.m. or 8:00 a.m.	3	I've had somebody just with some tax
4	and go for eight hours, but could extend, of	4	experience -- well, I don't know if it's tax
5	course, as well to overtime.	5	experience, but...
6	Q And how many days a week?	6	Q Someone to help you with your tax
7	A Generally six days a week.	7	returns?
8	Q Is that the norm for the Cleveland	8	A Yeah.
9	Police Department or that --	9	Q You filed tax returns for 2017 I take
10	A Your days off rotate. There's -- like	10	it?
11	one week you would be off Monday and	11	A I did, yes.
12	Tuesday, the following week, you would be	12	Q Did you have anybody help you?
13	off Tuesday and Wednesday. That's my	13	A I had it done, yes.
14	shift.	14	Q Who did it for you?
15	Q And on average, it's six days a week?	15	A Ta-Check. Ta-Check.
16	A Yes.	16	Q Can you spell that for me?
17	Q Okay. All right. Let go back to your	17	A T-A Check, C-H-E-C-K.
18	secondary employment. Who typically pays	18	Q And that's a company?
19	you for the secondary employment	19	A Yes.
20	assignments, the private employer?	20	Q Where are they located?
21	A Yes, yes, yes.	21	A Pearl Road in Parma, I believe.
22	Q Does it go through the city in any way?	22	Q Is there a person or an individual
23	A Does not.	23	there that you worked with?
24	Q How are you typically paid? Cash,	24	A Yes. Don Lambo.
25	check, direct deposit, what?	25	Q Don Lambo, L-A-M-B-O?
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1	A Both, all of those.	1	A Yes.
2	Q All of those. It depends?	2	Q He prepared your 2017 tax return?
3	A Depends.	3	A Yes.
4	Q And have you ever been issued a 1099?	4	Q And did he -- what about the year
5	A Yes.	5	before, 2016?
6	Q Okay. A W-2?	6	A I believe so, yes. I believe so.
7	A Yes.	7	Q The year before that, 2015?
8	Q Okay. Did The Corner Alley issue a W-2	8	A Yes, I think so, yes.
9	or a 1099?	9	Q Okay. How far back do you think he
10	A No, neither.	10	helped you with your tax returns?
11	Q Neither. And how did The Corner Alley	11	A Not much past that, I don't think so.
12	pay you?	12	Q Okay. With the cash jobs, how do you
13	A Cash.	13	report your income?
14	Q Did you report your income from the	14	A I would just tell him how much I made
15	secondary employment jobs to the taxing	15	and then he would put it on the forms,
16	authorities?	16	however it's put on there. I don't know.
17	A Yes.	17	Q And did you keep any documentation when
18	Q All the time?	18	you got cash payment about how much you
19	A Yes.	19	received and the hours you worked?
20	Q And on your tax returns, do you declare	20	A No.
21	yourself an employee when you work secondary	21	Q How would you know how much to report
22	employment or independent contractor?	22	to Don Lambo?
23	A I'm not sure how the tax guy, you know,	23	A Just in my mind, I would keep track of
24	approaches that.	24	it.
25	Q Who's your tax guy?	25	Q You would just keep a memory of how

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1 much --		1 electronic --	
2 A It wasn't -- it wasn't like, you know,		2 A No, I've never seen it electronically.	
3 a great number.		3 Q So any postings would be somewhere	
4 Did the Cleveland Police Department		4 inside of the police district headquarters?	
5 ever provide you training on being a private		5 A That would be where most of it is or	
6 security guard?		6 it's word of mouth.	
7 A No, not that I can recall, no.		7 Q What about The Corner Alley job, how	
8 Have you ever gotten formal training on		8 did you find out about that?	
9 being a private security guard?		9 A From Lieutenant Zarlenga.	
10 A No.		10 Q Zarlenga?	
11 Q Have you ever read any materials to		11 A Yeah.	
12 educate yourself on being a private security		12 Q Was there a job posting about The	
13 guard?		13 Corner Alley job?	
14 A No.		14 A No.	
15 Q In your interrogatory answers, you		15 Q Did Lieutenant Zarlenga ever work	
16 used the phrase "special duty" to talk about		16 secondary employment for The Corner Alley?	
17 your secondary employment. For example,		17 A I don't know. I have no idea.	
18 you've had hundreds of special duty		18 Q You don't know how he found out about	
19 assignments. Is that a terminology that you		19 the job, he just told you about it?	
20 use when describing secondary employment?		20 A Right.	
21 A We call it part-time.		21 Q And what did he explain the job	
22 Part-time. Does the phrase "special		22 involved?	
23 duty" have any meaning to you as a police		23 A It's part-time.	
24 officer?		24 Q Anything more than that?	
25 A Ours is part-time. That's the word we		25 A No.	
	Page 134		Page 136
1 use for it, part-time.		1 Q Okay. Let talk a little bit more	
2 Part-time. Do you know what		2 specifically about your employment	
3 terminology the police department uses?		3 arrangement with The Corner Alley. You told	
4 A I don't believe they use any, other		4 me how you found out about the job is	
5 than secondary employment. That's what they		5 through this lieutenant.	
6 would use, sorry.		6 Did you have to submit any kind of	
7 Q Secondary employment.		7 written application to The Corner Alley to	
8 A That's what they would use.		8 apply for the job?	
9 Q How do you typically find out about the		9 A No.	
10 secondary employment job opportunities?		10 Q How did you apply for the job?	
11 A That could vary. Word of mouth, could		11 A I didn't apply for it. I was given the	
12 be posted.		12 opportunity from the lieutenant to work it	
13 Q Posted where?		13 and I worked it.	
14 A In the buildings.		14 Q So he was your point person for The	
15 Q The police buildings?		15 Corner Alley?	
16 A Yes.		16 A He told me about it, yeah.	
17 Q Where would it be posted, on a bulletin		17 Q Okay. So he told you about it and then	
18 board?		18 did you reach out to The Corner Alley?	
19 A Could be anywhere.		19 A No.	
20 Q So it could be posted on a bulletin		20 Q They reached out to you?	
21 board?		21 A No.	
22 A Could be, could be anywhere. Could be		22 Q How'd you get the job?	
23 in a roll call room, could be in a roll call		23 A Through the lieutenant.	
24 folder. It could be anywhere, honestly.		24 Q I don't understand that. Was he an	
25 Q Electronically, do you ever see any		25 employee of Corner Alley?	
	Page 133		Page 135
1 much --		1 electronic --	
2 A It wasn't -- it wasn't like, you know,		2 A No, I've never seen it electronically.	
3 a great number.		3 Q So any postings would be somewhere	
4 Did the Cleveland Police Department		4 inside of the police district headquarters?	
5 ever provide you training on being a private		5 A That would be where most of it is or	
6 security guard?		6 it's word of mouth.	
7 A No, not that I can recall, no.		7 Q What about The Corner Alley job, how	
8 Have you ever gotten formal training on		8 did you find out about that?	
9 being a private security guard?		9 A From Lieutenant Zarlenga.	
10 A No.		10 Q Zarlenga?	
11 Q Have you ever read any materials to		11 A Yeah.	
12 educate yourself on being a private security		12 Q Was there a job posting about The	
13 guard?		13 Corner Alley job?	
14 A No.		14 A No.	
15 Q In your interrogatory answers, you		15 Q Did Lieutenant Zarlenga ever work	
16 used the phrase "special duty" to talk about		16 secondary employment for The Corner Alley?	
17 your secondary employment. For example,		17 A I don't know. I have no idea.	
18 you've had hundreds of special duty		18 Q You don't know how he found out about	
19 assignments. Is that a terminology that you		19 the job, he just told you about it?	
20 use when describing secondary employment?		20 A Right.	
21 A We call it part-time.		21 Q And what did he explain the job	
22 Part-time. Does the phrase "special		22 involved?	
23 duty" have any meaning to you as a police		23 A It's part-time.	
24 officer?		24 Q Anything more than that?	
25 A Ours is part-time. That's the word we		25 A No.	
	Page 134		Page 136
1 use for it, part-time.		1 Q Okay. Let talk a little bit more	
2 Part-time. Do you know what		2 specifically about your employment	
3 terminology the police department uses?		3 arrangement with The Corner Alley. You told	
4 A I don't believe they use any, other		4 me how you found out about the job is	
5 than secondary employment. That's what they		5 through this lieutenant.	
6 would use, sorry.		6 Did you have to submit any kind of	
7 Q Secondary employment.		7 written application to The Corner Alley to	
8 A That's what they would use.		8 apply for the job?	
9 Q How do you typically find out about the		9 A No.	
10 secondary employment job opportunities?		10 Q How did you apply for the job?	
11 A That could vary. Word of mouth, could		11 A I didn't apply for it. I was given the	
12 be posted.		12 opportunity from the lieutenant to work it	
13 Q Posted where?		13 and I worked it.	
14 A In the buildings.		14 Q So he was your point person for The	
15 Q The police buildings?		15 Corner Alley?	
16 A Yes.		16 A He told me about it, yeah.	
17 Q Where would it be posted, on a bulletin		17 Q Okay. So he told you about it and then	
18 board?		18 did you reach out to The Corner Alley?	
19 A Could be anywhere.		19 A No.	
20 Q So it could be posted on a bulletin		20 Q They reached out to you?	
21 board?		21 A No.	
22 A Could be, could be anywhere. Could be		22 Q How'd you get the job?	
23 in a roll call room, could be in a roll call		23 A Through the lieutenant.	
24 folder. It could be anywhere, honestly.		24 Q I don't understand that. Was he an	
25 Q Electronically, do you ever see any		25 employee of Corner Alley?	

	Page 137		Page 139
1	A I don't know his arrangement with them	1	Corner Alley, it was always Thursdays and Saturdays?
2	at all.	2	A I want to say that when we started,
3	Q Okay.	3	when I started, when we started, it was only
4	A He said, "I got this part-time, you	4	Thursdays. I believe Saturdays were added.
5	interested in working it?"	5	Q Was it always just one officer working
6	I said, "I'm available on these dates	6	at this Corner Alley location at one time?
7	and times."	7	A On Thursdays, there would be two.
8	"There you go."	8	Saturdays, when Saturdays became part of it,
9	Q I see. And so he told you what -- he	9	it was one.
10	told you when to show up?	10	Q One officer. And I take it you did
11	A Yes.	11	work some Thursdays at The Corner Alley?
12	Q Did you ever deal with any employee of	12	A I only worked there Thursdays.
13	The Corner Alley in terms of scheduling?	13	Q You did work there on Thursdays?
14	A No.	14	A On Thursdays.
15	Q And who paid you, the lieutenant?	15	Q Who did you work there with?
16	A The lieutenant.	16	A That would vary again.
17	Q How often would he pay you? Daily,	17	Q Okay.
18	weekly, monthly?	18	A There would be times when somebody
19	A It varied. Whenever I would see him.	19	couldn't do it, I'd have to just do it
20	Q How would he know how many hours you	20	myself.
21	worked?	21	Q So at no point did you work with The
22	A Based off of the days that he gave you	22	Corner Alley employees to arrange your
23	-- gave me.	23	schedule, you did all this through the
24	Q I see. And how often would he give you	24	lieutenant?
25	the work schedule?	25	
	Page 138		Page 140
1	A I did the schedule for that -- for the	1	A Right.
2	east side location.	2	Q And in collaboration with these patrol
3	Q Okay. You created the work schedule?	3	officers that you would work with as well,
4	A I did, yes. I had officers.	4	right?
5	Q You what?	5	A Right, yeah.
6	A I had officers working it.	6	Q And who paid the patrol officers, you
7	Q You had officers working what?	7	or the lieutenant?
8	A Corner Alley.	8	A He would give me the money and then I
9	Q Okay. What other officers worked at	9	would give it to...
10	that Corner Alley location?	10	Q And who would pay this lieutenant?
11	A Let me think who worked it for me.	11	A I have no idea.
12	They were newer guys. I don't really -- I	12	Q What did you tell me his name is?
13	don't really remember.	13	A Zarlenga.
14	You got to understand, it's you walk up	14	Q What is it?
15	to somebody, say, "I got some part-time, you	15	A Zarlenga.
16	want to work it," and that's how it's	16	Q Zarlenga. And which district is he in?
17	filled.	17	A He's not. He's the FOP vice president.
18	Q Very informal it sounds like?	18	Q Oh, that's right. You told me about
19	A Exactly.	19	him already.
20	Q But how would you know what days and	20	You don't know who he received the
21	what hours you would be reporting to The	21	money from?
22	Corner Alley?	22	A I do not, no.
23	A It was only two days, it was Thursdays	23	Q Do you know if he was taking a cut of
24	and Saturdays.	24	your pay?
25	Q I see. From when you started there at	25	A I do not know that.

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1	Q Is that typically how these secondary 2 jobs work, that a lieutenant would be 3 responsible -- 4 A No, any -- there's -- I mean, rank is 5 nothing. Could be anybody. 6 Q But would it be an officer that would 7 pay the other officers working the part-time 8 employment? 9 A Not necessarily. A lot of times you 10 could get paid directly, too. 11 Q And on those occasions when you would 12 be responsible for paying the other 13 officers, did you take a cut of their pay? 14 A No. 15 Q And how did you keep track of the money 16 to make sure to document that the amount of 17 money you're receiving is the same amount of 18 money you were giving to the patrol 19 officers? 20 A Well, I would know that --- what I was 21 supposed to pay them and what I received and 22 that's what I would pay them because I would 23 be receive -- I would be receiving that 24 specific amount. 25 Q From the lieutenant?	 1 there. 2 Q Have you ever worked at a bowling alley 3 before? 4 A No. 5 Q What about a bowling alley with a bar 6 inside? 7 A No. 8 Q What about a bowling alley with a bar 9 and an arcade? 10 A No. 11 Q So who determined what your duties and 12 responsibilities were at The Corner Alley, 13 just you? 14 A Yes. 15 Q Okay. And what in your mind were your 16 duties and responsibilities? 17 A Presence. 18 Q Did you have any responsibilities to 19 patrol the area, patrol the premises? 20 A I didn't. 21 Q Just to be a physical presence? 22 A Right. 23 Q And beyond that, you didn't have any 24 other responsibilities? 25 A Right.
	Page 142	Page 144
1	A Yes. Q And then you would dole out as 3 appropriate to the different officers? 4 A Right. Q But you didn't make any documentation 6 about who you paid and how much? 7 A No. 8 Q And what were your duties and 9 responsibilities while working security at 10 The Corner Alley? 11 A I wasn't given any specifically. Q Did you ask? 13 A No. Q Did you ask The Corner Alley or any of 15 its employees, "What do you want me to do 16 here?" 17 A No. Q Were you given any limitations on what 19 you were allowed to do? 20 A I wasn't -- no, I wasn't given 21 anything. Q You worked at The Corner Alley Uptown. 23 Did you ever work at the other Corner Alley 24 location? 25 A No, I don't believe I ever worked down	 Q Did anyone at Corner Alley ever talk to 2 you about why they wanted to hire a police 3 officer? 4 A No. Q Did you ever ask them? 6 A No. Q Did you ever interact with any Corner 8 Alley employee? 9 A Just in, you know, hello, how are you, 10 the weather, order some food. I ordered 11 food. Q Can you recall any Corner Alley 13 employees' names? 14 A No. Q Did you ever know their names? 16 A No. Q I think you did tell me that you got 18 written permission to work this second job? 19 A I did, yes. Q And did the police department know the 21 manner in which you were being paid? 22 MR. PIKE: Objection. 23 Form. 24 A I don't know. Q Is that something that you told them?

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1	MR. PIKE: Same 2 objection. 3 A No. 4 Q Did they ever ask? 5 A No. 6 Q Is that something that you have to 7 report to them, the manner in which you're 8 being paid at that secondary employment? 9 A No. 10 Q And you were approved by the police 11 department to carry your firearm while 12 working this job? 13 MR. PIKE: Objection. 14 Form. 15 A Yes. 16 Q And to wear your police uniform, right? 17 You had permission to do that? 18 A Yes. 19 Q And you had permission to carry your 20 intermediate weapons that we talked about 21 before? 22 A Yes. 23 Q Did the police department impose any 24 restrictions on what you could do at The 25 Corner Alley that you're aware of?	1 A I don't know. 2 Q Did you ever ask to see them? 3 A No. 4 Q Were you ever given a layout, a 5 document showing the layout of The Corner 6 Alley premises? 7 A No. 8 Q Can you tell me what the capacity was 9 at The Corner Alley Uptown? 10 A I cannot, I couldn't tell you at all. 11 Q You were never told that information by 12 The Corner Alley? 13 A Right. 14 Q You didn't ask it either? 15 A No. 16 Q Were you ever told what the alcohol 17 sales were on Saturdays? 18 A Sales? What do you mean? 19 Q Alcohol sales, the amount of beverages, 20 alcoholic beverages that were sold at The 21 Corner Alley. 22 A Like dollar-wise? 23 Q Dollar-wise or -- 24 A No, no, no. 25 Q You never were provided that
1	Page 146	Page 148
2	A No. 3 Q Did they restrict your work with 4 respect to the bar area at The Corner 5 Alley? 6 A No. 7 Q Was there a written agreement or 8 contract between you and The Corner Alley? 9 A No. 10 Q Did you ever get any training documents 11 from The Corner Alley? 12 A No. 13 Q Any handbooks? 14 A No. 15 Q Guidelines? 16 A No. 17 Q Memos? 18 A No. 19 Q Pamphlets? 20 A No. 21 Q Policies? 22 A No. 23 Q Employee manual? 24 A No. 25 Q Do you know if any such documents existed at The Corner Alley?	1 information? 2 A No. 3 Q On Thursdays or Saturdays? 4 A No dates. 5 Q Okay. Well, was more or less alcohol 6 sold on Saturdays compared with Thursdays? 7 A I have no idea. 8 Q What about the number of patrons, 9 Thursdays compared with Saturdays? 10 A Again, no idea. 11 Q Were you aware if there had been any 12 fights ever at The Corner Alley? 13 A To my knowledge, I'm not aware of any, 14 no. 15 Q Any medical incidents at The -- 16 A Again, not aware of any. 17 Q Okay. Any disturbance at The Corner 18 Alley that resulted in the police being 19 called? 20 A To my knowledge, I don't know. 21 Q Did you have any responsibility to 22 check IDs of people coming into the bar? 23 A I did not. 24 Q Did anybody that you were aware of, did anybody check IDs at The Corner Alley?

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1	A I didn't, I don't -- I didn't, no.	1 A I did not.
2	Q But you didn't see anybody else doing that?	2 Q Did you ever discuss with The Corner Alley the circumstances under which you would use your gun if necessary?
3		3
4	A No.	4
5	Q Was there ever a bouncer at the front door?	5 A No.
6		6 Q Were you given -- were you provided any
7	A No.	7 restrictions on when or how you could use
8	Q Did you ever see anybody get kicked out	8 your firearm while working at The Corner
9	of The Corner Alley before the incident on	9 Alley?
10	January 13th, 2018?	10 A No.
11	A No.	11 Q If I'm understanding correctly, you
12	Q Did you observe any fights?	12 never underwent any kind of interview
13	A No.	13 process --
14	Q Did The Corner Alley ask you to carry	14 A Correct.
15	your firearm while working?	15 Q -- to get the job at The Corner Alley?
16	A No.	16 A That's correct.
17	Q Presumably you were -- because you were	17 Q You didn't submit any documentation to
18	a presence there, it was clear to the	18 The Corner Alley?
19	patrons that you were carrying a firearm; is	19 A No.
20	that fair to say?	20 Q You didn't submit your personnel file?
21	A I can't -- I can't say what they would	21 A No.
22	interpret.	22 Q Do you know if they performed a
23	Q Sure. Let me ask it this way: Were	23 background check on you?
24	you concealing the fact that you were	24 A I do not know.
25	carrying a firearm while working at The	25 Q Did anybody at The Corner Alley tell
	Page 150	Page 152
1	Corner Alley?	1 you that they were going to do a background
2	A No.	2 check?
3	Q So it was visible?	3 A No.
4	A My coat would have been -- probably	4 Q How soon after you learned about the
5	would have been covering it.	5 job from the lieutenant did you work your
6	Q Okay. Did you wear your coat the	6 first shift at The Corner Alley?
7	entire time working at The Corner Alley when	7 A It would have been relatively soon.
8	you were inside?	8 Q Like the same day or within days?
9	A That night?	9 A Within days I would say.
10	Q Just in general.	10 Q Okay. If you were sick and couldn't
11	A Depended on the weather.	11 work The Corner Alley, who would you
12	Q Okay. And you did carry your weapon	12 notify?
13	every time you worked at The Corner Alley?	13 A The lieutenant.
14	A Yes.	14 Q Lieutenant. And you don't know who he
15	Q Did The Corner Alley employees ever	15 would in turn notify?
16	object to you having a firearm?	16 A No, exactly.
17	A No.	17 Q Do you know the total number of hours
18	Q Were you aware that this was a	18 you worked at The Corner Alley in 2017?
19	no-firearm establishment?	19 A I do not.
20	A No.	20 Q You never made any documentation?
21	Q Okay. You didn't see that big sticker	21 A No.
22	on the front door?	22 Q Was that something you typically did as
23	A I did not.	23 -- when you worked secondary employment, you
24	Q Did you ever see anybody else carrying	24 would make documentation of the hours
25	a firearm inside The Corner Alley?	25 worked?

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1	A No.	1	and report it back to The Corner Alley that
2	Q Not something you kept track of?	2	you were not available to work anymore?
3	A No.	3	A I can't -- I don't know what he -- what
4	Q You were not issued a W-2 or a 1099 by	4	he would do or what he has done.
5	The Corner Alley?	5	Q Okay. So you don't know one way or the
6	A I was not.	6	other and you didn't do anything to notify
7	Q When you got to The Corner Alley, did	7	The Corner Alley?
8	you have to report to somebody, say, "I'm	8	A Right.
9	here"?	9	Q You just -- okay. All right. Tell me
10	A No.	10	about this restricted duty. Why are you on
11	Q What was your typical Thursday shift?	11	restricted duty?
12	A I believe 9:00 p.m. to 1:00, 1:00 a.m.	12	A Because of the ongoing investigation.
13	Q And was that when the establishment	13	Q And what are you allowed to do while
14	closed, 1:00 a.m.?	14	you're on restricted duty?
15	A I don't know if they closed or not that	15	A Administrative duties.
16	early.	16	Q And what does that mean? What are you
17	Q And what about Saturdays, the same,	17	doing on a day-to-day basis?
18	9:00 to 1:00; your shift I mean?	18	A It varies. Whatever my lieutenant
19	A Yes; I think so, yes.	19	would give me administratively, that's what
20	Q Did those hours ever change or was your	20	I do.
21	shift always 9:00 to 1:00?	21	Q Who is your lieutenant?
22	A I think it was 9:00 to 1:00.	22	A James Plent.
23	Q And when was the last date you were	23	Q Plent?
24	working secondary employment at The Corner	24	A Plent, yes.
25	Alley, January 13th, 2018?	25	Q Despite being on restricted duty, do
	Page 154		Page 156
1	A That's the last day.	1	you still maintain your normal hours?
2	Q Okay. And why was that your last day?	2	A Yes.
3	Were you fired by The Corner Alley?	3	Q About 48 hours a week?
4	MR. ROCHE: Objection. Go	4	A I'm on Monday through Friday now, so 40
5	ahead.	5	hours a week.
6	A No, not to my knowledge.	6	Q And you're paid?
7	Q So how did you know that you were not	7	A I am.
8	going to be working there anymore?	8	Q And you've been paid consistently since
9	A Since the incident, I'm on restricted	9	this incident?
10	duty.	10	A Yes.
11	Q Even to this day, you're still on	11	Q Have you worked any secondary
12	restricted duty?	12	employment since the incident?
13	A I am.	13	A I have not.
14	Q And that's the reason you no longer	14	Q Do you know when you're going to be --
15	worked at The Corner Alley, because you were	15	return back to normal duties?
16	on restricted duty?	16	MR. PIKE: Objection.
17	A Yes.	17	Form.
18	Q You were not told by The Corner Alley	18	A I do not know.
19	that we didn't want you to come back?	19	Q Have you received any documentation
20	A I was not.	20	related to your restricted duty?
21	Q Did you have a conversation with this	21	A No.
22	Lieutenant Zarlenga that you wouldn't be	22	Q So how did you find out you were on
23	working at The Corner Alley anymore?	23	restricted duty?
24	A No.	24	A I was told.
25	Q You just assumed that he would find out	25	Q By your lieutenant or by somebody

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1	else?	1	to any particular unit?
2	A Oh, boy. I'm trying to think here. I	2	A Just District Five.
3	want to say I was told by the homicide unit.	3	Q I understand. All right. Let's turn
4	Q Who in the homicide unit?	4	back to The Corner Alley. Were you aware of
5	A It would have been Lieutenant Pillow.	5	the layout of The Corner Alley when you were
6	Q Lieutenant Pillow?	6	working there?
7	A Pillow, yeah.	7	A Yes.
8	Q How do you spell it? How do you spell	8	Q Okay. Can you describe the second
9	Pillow?	9	floor for me?
10	A P-I-L-L-O-W, Pillow. I believe that's	10	A Only thing that I know about the second
11	who told me, but somebody in that -- in that	11	floor is there's a bathroom up there.
12	chain right there.	12	Q Did you ever go up to the second floor
13	Q Have you had a conversation with this	13	while working there?
14	lieutenant about the incident?	14	A No.
15	A I have not.	15	Q You always just stayed on the first
16	Q Are you normally working in the	16	floor?
17	homicide unit?	17	A Yes.
18	A No. He's the officer in charge of it.	18	Q And were you responsible for monitoring
19	Q Okay. Is there a unit that you're	19	either the front or the back entrance?
20	assigned to?	20	A Was I assigned to monitor the front or
21	A I'm assigned to District Five.	21	back entrance, that's the question?
22	Q Just District Five?	22	Q Correct.
23	A Oh, you know, I apologize. I'm	23	A No.
24	assigned to the employees assistance unit.	24	Q Who was monitoring the front and the
25	Q And what is that?	25	back entrance while you were working there?
	Page 158		Page 160
1	A That's the unit that helps officers	1	MR. ROCHE: Objection.
2	involved in critical incidents.	2	A I don't believe anyone.
3	Q Give me an example of what a critical	3	Q Were both the front and the back opened
4	incident might be.	4	while you were working there? I mean,
5	A Use of deadly force incident.	5	unlocked, opened while you were working
6	Q So any time there's an officer involved	6	there on Thursdays?
7	in the use of deadly force, it's your unit	7	A Yes.
8	that goes to the scene, somebody from your	8	Q And Saturdays?
9	unit?	9	A Yes.
10	A I don't know their protocol, if they	10	Q Were you aware of where the
11	respond to the scene. I know that they	11	surveillance cameras were located throughout
12	address the officer afterwards.	12	the establishment?
13	Q And what is your role within that	13	A Not at all, no.
14	unit?	14	Q Were you ever told by The Corner Alley
15	A That's just where I'm assigned.	15	or anybody working for The Corner Alley
16	Q Okay. Is it just a title or does it	16	where the different cameras were located?
17	actually mean anything?	17	A No.
18	A It's just where I'm assigned while the	18	Q Did you ever ask?
19	investigation is going -- ongoing.	19	A No.
20	Q Oh, I understand. While you're on	20	Q Did you know where the room was where
21	restricted duty, that's the unit you're	21	the monitors for the surveillance videos
22	assigned to?	22	were located?
23	A Right.	23	A No.
24	Q I see. Before you were on restricted	24	Q Did you know if it was on the first
25	duty, before the incident, were you assigned	25	floor or the second floor?

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1	A No, no idea.	1	weapons?
2	Q Did you know where the manager's office was located at this --	2	A No.
3	A No.	3	Q At any point?
4	Q Okay. Do you know what square footage of The Corner Alley establishment was?	4	A I did not, no.
5	A No, not at all.	5	Q On any day that you worked?
6	Q Do you know how many bars were inside the premises?	6	A I did not, no.
7	A No.	7	Q Was any Corner Alley staff trained in first aid?
8	Q This was an establishment open to adults and children?	8	A I have no idea.
9	A I don't know.	9	Q You have no idea. Did anybody tell you whether they were one way or the other?
10	Q Okay. Do you recall seeing children there ever?	10	A No.
11	A Not that I can remember, no.	11	Q Do you know if The Corner Alley had first aid supplies on hand?
12	Q Did you pay attention to that one way or the other, whether there were children at the establishment?	12	A I have no idea.
13	A I never specifically looked for kids or did not look for them.	13	Q And so who was responsible at The Corner Alley for determining when the first aid kit would be used?
14	Q Okay. Not something that was within your purview providing security at The Corner Alley?	14	A I have no idea.
15	A It's not something that I did.	15	Q Did The Corner Alley have an emergency plan in place the night of the shooting?
16		16	A I have no idea.
17		17	Q Evacuation plan?
18		18	A Again, no idea.
19		19	Q Did The Corner Alley ever issue you a
			Page 164
1	Q The night of the incident, January 13th, 2018, how many employees were working at The Corner Alley?	1	handheld radio?
2	A I have no idea.	2	A No.
3	Q Who was part of the security team at The Corner Alley that night?	3	Q Were you carrying a radio?
4	A I guess it would just be me.	4	A I was not.
5	Q And what was the security plan that night?	5	Q Did you have a plan to stay in one location while you were working at The Corner Alley or you just moved around throughout the night?
6	A Presence.	6	A I don't recall moving around too much,
7	Q Anything else?	7	but I also don't -- saying I'm going to stay
8	A No.	8	here, right here. You move around. It's
9	Q Did you have a meeting with anyone else to discuss the security plan?	9	just, you know...
10	A No.	10	Q You didn't have a plan one way or the other?
11	Q Did Corner Alley ever hire a security company to assist you at this job site?	11	A No.
12	A I never talked with any security company.	12	Q When was the last time you were working on duty as a police officer prior to coming to The Corner Alley that night?
13	Q Did you ever check for weapons while working security at The Corner Alley?	13	A I believe it was that day, during the day.
14	A Check?	14	Q What were your hours that day?
15	Q Check patrons for weapons?	15	A I believe they were 6:00 to 2:00, 6:00
16	A No.	16	a.m. to 2:00 p.m.
17	Q Did you see anybody checking for	17	Q And where did you spend most of that day at work? Were you at the district

	Page 165		Page 167
1	headquarters or were you on patrol?	1	and starting your job that night at The Corner Alley?
2	A I don't recall.	2	A No, because I would have been home. Nobody's there.
3	Q Is that something that would be documented?	3	Q Did you consume any alcohol that day?
4	A It would be on my duty report.	4	A No.
5	Q And what about earlier in the week, did you work a full week?	5	Q At any point during that day?
6	A I believe so, yeah.	6	A Absolutely no.
7	Q Did you work Monday through Saturday?	7	Q When you got to The Corner Alley, did you report to anybody?
8	A I don't know what dates -- what days I would have worked, what days I would have been off.	8	A Did not.
9	Q But if we got your duty reports from that week, it would reflect your hours?	9	Q Did anybody report to you?
10	A It would reflect the dates and times I worked, yes.	10	A No.
11	Q Got it. Did you work that Thursday before the incident at Corner Alley?	11	Q Was anybody supervising you?
12	A Again, I don't remember if I was off on those days. Could have been working overtime. I can't really specifically remember and I haven't looked at anything to say I was working that day.	12	A No.
13	Q Were you working any other secondary employment anywhere else during this time	13	Q Did you supervise anyone?
14		14	A No.
15		15	Q You told me your shift started around 9:00 p.m. that night. Do you know what time you actually arrived there?
16		16	A I want to say it was quarter, quarter after, 20 after, something like that.
17		17	Q How did you get there, by car?
18		18	A Yes.
19		19	Q Was it a police car you drove in?
20			Page 168
21	frame?	1	A No.
22	A No.	2	Q Where'd you park?
23	Q So in January of 2018, Corner Alley was your only other secondary job?	3	A The rear of the building.
24	A Yes.	4	Q What was the weather like that night, pretty cold?
25	Q So you got off duty around 2:00 p.m. that Saturday and where did you go? Where was the first place you went after work?	5	A Terrible. Terrible outside.
	A I would have went home.	6	Q Below freezing?
	Q And when you got home, what'd you do?	7	A I don't know.
	A I remember, you know, sleeping at some point.	8	Q But a typical terrible --
	Q What time did you get up?	9	A It was cold.
	A Have no idea.	10	Q -- Cleveland winter?
	Q What'd you do once you got up?	11	A It was cold.
	A Probably took a shower and get ready to go back to work.	12	Q Okay. Snow on the ground?
	Q At The Corner Alley?	13	A A lot of snow and ice.
	A Right.	14	Q So since you didn't report to anybody, was there any way for The Corner Alley to know when you got there?
	Q Did you have anything to eat?	15	A They would see me.
	A I don't remember.	16	Q The other employees would see you?
	Q Was anybody with you at your house?	17	A Yeah.
	A No.	18	MR. ROCHE: Objection.
	Q Did you see anybody in between finishing your work at the police department	19	Pardon me. I'm going to put on one continuing objection, too, just
		20	acknowledging the fact that there's a legal issue regarding his status,
		21	
		22	
		23	
		24	
		25	

	Page 169	Page 171
1	his employment relationship. With	1 A I do not. I want to say it was a -- it
2	that, go ahead please.	2 was a -- maybe a chicken salad.
3	Oh, also while we're taking a	3 Q And were you able to finish it?
4	moment, we should have a	4 A I did eat, yes.
5	conversation about any time	5 Q And so other than getting a Mountain
6	constraints today. We're after four	6 Dew, eating your dinner, what else did you
7	o'clock. You guys can certainly go	7 do before the first incident inside The
8	as long as you need to, but	8 Corner Alley?
9	everybody else has some questions.	9 A Nothing. I was staying in there.
10	I don't know if the officer has any	10 Q Did you go upstairs at any point?
11	time restrictions. We should at	11 A Hmm-mm.
12	least talk about it and we can do	12 Q No?
13	that off the record, whatever you	13 A Before the incident?
14	guys want.	14 Q Correct.
15	MR. TOR: Sure.	15 A I did not, no.
16	What was my last question?	16 Q All right. Do you recall about what
17	---	17 time the incident occurred inside the
18	(Record read.)	18 establishment?
19	---	19 A I do not, no.
20	MR. ROCHE: Pardon me,	20 Q How did you learn about it?
21	Jeremy. I had a question about any	21 A One of the employees informed me about
22	time issues.	22 it.
23	MR. TOR: Yeah, no. We	23 Q What'd they tell you?
24	can maybe discuss it during a break.	24 A Said there was a fight.
25	MR. ROCHE: Sure,	25 Q Did you witness the fight yourself?
	Page 170	Page 172
1	absolutely.	1 A I did not.
2	BY MR. TOR:	2 Q By the time you got to the location of
3	Q Do you know how many other -- how many	3 the fight, did you see anybody fighting?
4	Corner Alley employees there were at this --	4 A I did not.
5	A I do not.	5 Q What did you -- what did you see when
6	Q Do you know who the manager was on	6 you got there?
7	duty?	7 A Saw the first kid getting walked out,
8	A I do not.	8 saw from going back to where the second kid
9	Q Do you know what the employees' job	9 was, going upstairs because I think there
10	responsibilities were, one way or the other?	10 was personal belongings up there.
11	A No.	11 I went upstairs with them. There was
12	Q All right. So tell me everything you	12 some conversation back and forth between the
13	remember that you did before the first	13 employees and the individual and he I think
14	incident which happened inside The Corner	14 got a coat, I think it was, and they went
15	Alley between Thomas and his friend. You	15 around him, walked down the stairs and
16	get there a little after 9:15. What do you	16 walked out the front door.
17	do?	17 Q Did you hear what was said during the
18	A Got something to drink. I remember	18 conversation between this individual and the
19	asking if there was any ice and they said	19 employees?
20	there was no ice in the soda dispenser where	20 A I do not recall what was said at all.
21	I was getting soda. I got Mountain Dew.	21 Q And this individual, was that Thomas
22	Then I walked to the front, close to the	22 Yatsko?
23	alleys and I ordered some food with one of	23 A Upstairs?
24	the waitresses.	24 Q Yeah.
25	Q Do you remember what you ordered?	25 A Yes.

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<p>1 Q Okay. And the other individual who was 2 first walked out of the establishment, that 3 was his friend Deleon?</p> <p>4 A Yes.</p> <p>5 Q Okay. Did you have a conversation with 6 Thomas at any point during this time period 7 when he's going upstairs to get his jacket?</p> <p>8 A No, I did not.</p> <p>9 Q Did you ever have a conversation with 10 Thomas inside the bar?</p> <p>11 A I did not.</p> <p>12 Q Did you have a conversation inside the 13 establishment with his friend, Deleon?</p> <p>14 A I did not.</p> <p>15 Q So an employee called you over because 16 there had been a fight. What did you 17 understand your responsibilities to be? Why 18 were you being summoned?</p> <p>19 A Because I'm the policeman working the 20 place.</p> <p>21 Q And did you say or do anything?</p> <p>22 A No.</p> <p>23 Q You just followed the employee?</p> <p>24 A I did.</p> <p>25 Q Did you put your hands on Thomas at any</p>	<p>1 A I do not know.</p> <p>2 Q Was that discussed?</p> <p>3 A No.</p> <p>4 Q Did you offer it? Did you say, "Do you 5 guys want to call 911"?</p> <p>6 A Nope.</p> <p>7 Q Did you ask anybody if they wanted to 8 report any crime?</p> <p>9 A I didn't speak to anyone.</p> <p>10 Q Did you have any reason to think a 11 crime had occurred inside the establishment?</p> <p>12 A I didn't have reason to think anything 13 other than an altercation or fight occurred.</p> <p>14 Q Was that a basis for you to think that 15 any crime had occurred?</p> <p>16 A I guess -- I guess it depends.</p> <p>17 Q I mean, as you're walking out with 18 Thomas, in your mind, are you thinking that 19 criminal activity has just occurred in this 20 establishment?</p> <p>21 A I don't know. At that point, I don't 22 know because all I'm told is there was a 23 fight, so I know that from the employee, 24 there's a fight. That's all I know.</p> <p>25 Q Beyond that, you didn't know anything</p>
Page 174	Page 176
<p>1 point?</p> <p>2 A No.</p> <p>3 Q Did you know exactly what had happened 4 between Thomas and his friend?</p> <p>5 A Not one clue.</p> <p>6 Q You had no idea who threw a punch?</p> <p>7 A No.</p> <p>8 Q Didn't know any punches had been 9 thrown?</p> <p>10 A Nothing.</p> <p>11 Q So you didn't know if Thomas was an 12 innocent victim, whether he threw any 13 punches, you just have no idea one way or 14 the other, right?</p> <p>15 A I haven't a clue as to what happened 16 with any of them.</p> <p>17 Q How close did you get to Thomas?</p> <p>18 A I wasn't close at all to him.</p> <p>19 Q Do you know whose idea it was to eject 20 these two individuals from the 21 establishment?</p> <p>22 A I do not.</p> <p>23 Q It wasn't your decision?</p> <p>24 A I was not consulted about it, no.</p> <p>25 Q Do you know if anybody called 911?</p>	<p>1 else?</p> <p>2 A Right.</p> <p>3 Q Didn't draw any other conclusions?</p> <p>4 A Right.</p> <p>5 Q Well, did Thomas appear to be compliant 6 when he was being escorted out of the 7 establishment?</p> <p>8 A He was walking. Compliant? I don't 9 know. Walking, he was walking.</p> <p>10 Q He went out of the establishment 11 voluntarily, right?</p> <p>12 A He had a large group around him. It 13 wasn't voluntarily.</p> <p>14 Q Nobody had to physically remove him 15 from the establishment?</p> <p>16 A Nobody put hands on him, no.</p> <p>17 Q Right. Did it appear that he was 18 giving anybody a hard time about being 19 ejected from the establishment?</p> <p>20 A He was speaking his piece.</p> <p>21 Q And what was he saying?</p> <p>22 A I have no idea. I don't recall what he 23 was saying because I was behind the group.</p> <p>24 Q What do you mean "he was speaking his 25 piece"?</p>

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1 A To whatever the circumstances of the 2 fight, he was saying something, I'm 3 assuming, towards that, because they were 4 all nodding their heads in agreement as 5 they're walking. 6 Q Did you -- 7 VIDEOGRAPHER: Three minutes 8 of tape. 9 MR. TOR: What's that? 10 VIDEOGRAPHER: Three 11 minutes. 12 MR. TOR: Three 13 minutes. 14 BY MR. TOR: 15 Q Did you hear Thomas objecting verbally 16 or protesting being ejected from the 17 establishment? 18 A I don't recall what he said at all. 19 Q Right. So you didn't hear him 20 protesting? 21 A Like I said, I can't speak what he was 22 saying because I didn't hear it. 23 Q Okay. Did he fight with you as he was 24 being escorted out? 25 A With me?		1 been real close to the sidewalk, the common 2 sidewalk. 3 VIDEOGRAPHER: We're off the 4 record. 5 - - - 6 (Short recess to change tapes.) 7 - - - 8 VIDEOGRAPHER: We're back on 9 the record. 10 BY MR. TOR: 11 Q How much were you paid at The Corner 12 Alley? 13 A It was \$100 a night. 14 Q For the 9:00 p.m. to 1:00 a.m. shift? 15 A Yes. 16 Q What about the patrol officers, did 17 they get -- 18 A Same. 19 Q Did that lieutenant ever work at The 20 Corner Alley, to your knowledge? 21 A Not to my knowledge. 22 Q All right. So we were talking about 23 how you walked along with the employee to 24 escort Thomas out of the establishment. 25 Did you have authority to remove a
1 Q Yes. 2 A No. 3 Q Did he fight with any of the employees 4 while being escorted out? 5 A No. 6 Q Was this the first time you had ever 7 seen this individual, Thomas Yatsko? 8 A I never seen him before. 9 Q Did you feel threatened by him as he 10 was leaving? 11 A No. 12 Q Did you feel threatened by his friend? 13 A No. 14 Q Did any of The Corner Alley employees 15 express to you their concern about these two 16 individuals? 17 A They did not. 18 Q And once Thomas got outside, did you 19 also go outside? 20 A I followed them out, yes. 21 Q How far out did you follow them? 22 A Six or eight feet. 23 Q You were still with inside the patio by 24 the time you returned to come back inside? 25 A It would have been -- it would have	Page 178	1 patron from The Corner Alley? 2 A Yes. 3 Q And who gave you that authority? 4 A The state of Ohio. 5 Q Okay. So that was authority you 6 believed you had as a licensed police 7 officer? 8 A Yes. 9 Q So you got outside and did you have a 10 conversation with Thomas at that point? 11 A No con -- well, yeah, I did, yes. 12 Q What'd you say, what did he say? 13 A He and Delano? 14 Q Deleon. 15 A Deleon. Excuse me. Were talking with 16 each other like they were friends and I 17 remember asking them, "Are you guys 18 friends," and Deleon saying, "I thought he 19 were," and I said, "It's a funny way to 20 treat your friends." 21 Q What did you mean by that? 22 A Fight with your friends, the fighting 23 with your friends, engaged in a fight with 24 your friends. That's what I meant. 25 Q But I thought you told me you didn't

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1	know what had happened?	1	A I was not.
2	A Well, I was told a fight occurred.	2	Where were you facing, facing inward?
3	Q And you didn't know the circumstances of the fight?	3	A I was on a stool, so this way, that
4	A Correct.	4	way, turn. You know, just kind of looking
5	Q You didn't know who threw -- whether one or both ever them punched or shoved or threw any objects at the other?	5	around.
6	A Right.	6	Q Looking around. Not looking at anything in particular?
7	Q Was anything else said during this conversation?	7	A Right.
8	A The only thing that I said to them was, "You cannot come back inside."	8	Q But you were not observing what was happening outside?
9	Q Okay. And was a Corner Alley employee with you at the time that you said that to them?	9	A I was not, no.
10	A I do not recall any of them being there.	10	Q And what's the next thing you remember happening?
11	Q Did a Corner Alley employee also tell them that they couldn't come back into the establishment?	11	A A lady coming up to me saying that they
12	A I don't know. I don't know.	12	were fighting in the middle of Euclid
13	Q Why did you tell them they couldn't come back in?	13	Avenue, middle of the street I believe she
14	A Because of what I was told, the fight.	14	said.
15		15	Q Did you witness the fight from inside The Corner Alley?
16		16	A No.
17		17	Q And when you heard this, what did you do?
18		18	A I went outside.
19		19	Q Did you have your jacket on at the time?
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	
			Page 184
1	Q The fight. Did a Corner Alley employee say to you, "Please tell them that they can't come back into the establishment"?	1	A Yes.
2	A No.	2	Q And what was your purpose in going outside?
3	Q This was a decision you made on your own to tell them that they couldn't come back in?	3	A To see if what the citizen told me was, in fact, going on.
4	A Yes.	4	Q And if it proved to be correct, what was your plan? What were you going to do?
5	Q Had you ever removed anybody from The Corner Alley prior to this incident?	5	A Was going to intervene, going to take steps to stop the fight.
6	A No.	6	Q And is that what you ended up doing?
7	Q And then you went back into The Corner Alley?	7	Did you intervene to stop the fight?
8	A I did.	8	A I did intervene, yes.
9	Q And what's the next thing that you remember happening once you got inside?	9	Q Did you observe any of the fight?
10	A I sat down at the edge of the bar.	10	A Yes.
11	Q Near the window, facing --	11	Q What did you observe?
12	A The whole front is windows. Would have been I guess on the part by the entrance/exit door.	12	A I observed Thomas putting the boots to Deleon on the ground, punching him, head and face, body, kicking his body.
13	Q And what were you doing there?	13	Q And what was Deleon doing?
14	A Just sitting there.	14	A He was defenseless. He wasn't doing anything.
15	Q Were you watching what was happening on the public sidewalk or out on the street?	15	Q And did you see any weapon either in Deleon's hand or Thomas's hand?
16		16	A Other than his fists, no.
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

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1	A Put my hand on his shoulder.	1 Q Deleon testified, and you know because
2	Q Whose?	2 you were there, that you threatened to
3	A Thomas.	3 arrest him. Do you recall saying that?
4	Q You put your hand on his shoulder. Was	4 A I do not recall saying that to him.
5	it his left or his right shoulder?	5 Q Do you deny that you said that?
6	A I don't know.	6 A I don't deny it.
7	Q You put your hand on his shoulder.	7 Q Do you recall seeing Deleon walk away
8	Then did you pull him away?	8 after you intervened to break up the fight?
9	A Just to get him off of the kid, yes.	9 A No.
10	Q Did you have to use much effort to do	10 Q Deleon testified that after you
11	that?	11 intervened to break up the fight, Thomas did
12	A Yes.	12 not say anything to you. Is that correct?
13	Q Did you use one hand or two hands?	13 A I don't recall him saying anything to
14	A One hand.	14 me.
15	Q You were able to get him off with one	15 Q Deleon also testified that Thomas never
16	hand?	16 made any gestures towards you. Do you
17	A Yes.	17 dispute that testimony?
18	Q And what'd you say to him?	18 A I do, yes.
19	A I didn't say anything to him.	19 Q Deleon testified that Thomas never
20	Q Did you say anything to Deleon?	20 threatened you. Do you dispute that
21	A No.	21 testimony?
22	Q Okay. So what happens next?	22 A I do.
23	A Thomas turns to me, faces me and with	23 Q Deleon said that you were being nasty
24	the closed fists is getting ready to punch	24 to him, to Deleon. Do you have any reason
25	me with the closed fists.	25 to dispute that?
	Page 186	Page 188
1	Q Thomas is getting ready to punch you	1 A I wasn't being nasty to him.
2	with the closed fist?	2 Q You do dispute Deleon's testimony on
3	A Right.	3 that point?
4	Q And what do you say or do?	4 A Yeah, I wasn't nasty to the kid.
5	A I tell him, I said, "Look who you're	5 Q Deleon testified that you cursed at
6	going to punch."	6 him. Did you curse at him?
7	Q Did you identify yourself as a police	7 A Not at him, no.
8	officer?	8 Q Well, he recalls you saying something
9	A I did.	9 to the effect of "Fuck your phone." Did you
10	Q All right. So when you were observing	10 say that to Deleon?
11	Thomas, quote, "putting the boots to	11 A I did say that.
12	Deleon," did you have your weapon on you,	12 Q And why did you say that?
13	your gun?	13 A Because my purpose was not to look for
14	A Yes.	14 his phone, my purpose was to get him out of
15	Q And did you take your gun out of your	15 an active street that had cars driving up
16	holster?	16 and down on it, on snowy and ice conditions,
17	A I did not.	17 so I did say, "Forget your fucking phone,
18	Q Why not?	18 we'll get your phone. Don't worry about
19	A Didn't. I didn't -- I just didn't.	19 your phone. Your phone is not the thing we
20	Q Wasn't necessary?	20 have to worry about at this time."
21	A Wasn't necessary.	21 Q And did you help Deleon get out of the
22	Q And did you -- were you planning to	22 street?
23	arrest either Deleon or Thomas at that	23 A I did.
24	point?	24 Q Did you pick him up?
25	A I didn't have a plan at that point.	25 A I helped him to his feet, yes.

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<p>1 Q Okay. Was this before or after Thomas 2 tried to punch you?</p> <p>3 A It would have been after.</p> <p>4 Q Okay. So the sequence of events, 5 according to you, is you break up the fight 6 and Thomas goes to punch you?</p> <p>7 A Correct.</p> <p>8 Q You identify yourself as a police 9 officer and he doesn't punch you?</p> <p>10 A No.</p> <p>11 Q And then Deleon says something in 12 response, you say, "Fuck your phone," and 13 then you help him out of the street?</p> <p>14 A Yes.</p> <p>15 Q Okay. And what is Thomas doing at this 16 point?</p> <p>17 A He is gone. I have no idea where he 18 went. He ran off.</p> <p>19 Q Did you witness any crime occurring</p> <p>20 when you came out of the Corner Alley and 21 saw Thomas and Deleon?</p> <p>22 A Yes.</p> <p>23 Q What crime did you witness?</p> <p>24 A Assault, possibly a felonious assault, 25 depending on the outcome of his injuries.</p>	<p>1 you have apparently helped Deleon out of the 2 street?</p> <p>3 A I walked with him down -- would have 4 been almost to, like, the edge of The Corner 5 Alley's building.</p> <p>6 Q And what was your purpose in walking</p> <p>7 with Deleon and escorting him?</p> <p>8 A Wanted to put some distance between him 9 and Thomas.</p> <p>10 Q Did you say anything to Deleon?</p> <p>11 A Yes. I told him that I wanted him to 12 stay down there and that I was going to go 13 and get an ambulance and a police car for 14 him.</p> <p>15 Q Your plan was to get a police car and</p> <p>16 get an ambulance for him?</p> <p>17 A Correct, because I could see he was 18 bleeding from his mouth.</p> <p>19 Q And did you call anybody to get an</p> <p>20 ambulance or a police car?</p> <p>21 A I never got the opportunity to.</p> <p>22 Q And so you told Deleon to stay where he</p> <p>23 was?</p> <p>24 A Yes.</p> <p>25 Q And were you telling him that as a</p>
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<p>1 Q And who had committed the assault, 2 possible felonious assault?</p> <p>3 A Thomas.</p> <p>4 Q Did you report it? Did you call 911 to 5 report the incident?</p> <p>6 A Did not.</p> <p>7 Q Did you report it to anybody inside The 8 Corner Alley?</p> <p>9 A I did not.</p> <p>10 Q Did you arrest Thomas at that point 11 after you observed him --</p> <p>12 A Did not.</p> <p>13 Q -- after you observed the felonious 14 assault?</p> <p>15 A I did not.</p> <p>16 Q Why not?</p> <p>17 A I didn't have an opportunity to do any 18 of those stages that you just doled out. I 19 didn't have an opportunity to do any of 20 that.</p> <p>21 Q Did you tell Thomas that "I'm going to 22 arrest you for committing an assault"?</p> <p>23 A I did not tell him that.</p> <p>24 Q All right. What's the next thing that 25 you do after this episode happens and after</p>	<p>1 police officer, that you were ordering him 2 to stay in place, stay put?</p> <p>3 A I was telling him that I needed to go 4 get medical attention for him and a police 5 car; so, yes. Yes, I guess as a policeman.</p> <p>6 Q You were ordering him to stay there?</p> <p>7 A I wasn't ordering him. I was telling 8 him to stay there. He's not under arrest, 9 I'm not detaining him, so I didn't give him 10 an order to stay there.</p> <p>11 Q Did you tell him, "I'm going to try to 12 help you and get you" --</p> <p>13 A Absolutely, yes.</p> <p>14 Q Okay. So what's the very next thing 15 you do after you tell Deleon to stay put?</p> <p>16 A I started walking back towards the 17 front of the building.</p> <p>18 Q Then what happens?</p> <p>19 A That's where I'm met with Thomas.</p> <p>20 Q At any point did you help somebody park</p> <p>21 along Euclid Avenue?</p> <p>22 A No.</p> <p>23 Q And where did you encounter Thomas?</p> <p>24 A Right on that sidewalk entrance/exit to 25 the fenced in area.</p>

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1	Q And did you say anything to him?	1	A Very briefly.
2	A I don't recall saying anything to him.	2	Q Did he say anything to you during this
3	Q Do you recall telling him that you were	3	interaction before the altercation began?
4	placing him under arrest?	4	A I don't recall.
5	A No.	5	Q You don't recall what, if anything, you
6	Q Did you tell him that you're going to	6	said to him and you don't recall what, if
7	call a police unit to have him arrested?	7	anything, he said to you?
8	A Did not.	8	A Correct.
9	Q But that was your plan?	9	Q Do you recall anything that Breann
10	A No. My plan was to get Deleon medical	10	Steele, the young woman who was in the
11	attention.	11	patio, the blond woman, do you recall her
12	Q I see. And so then why did you engage	12	saying anything to you or to Thomas?
13	with Thomas? Why did you have a	13	A No.
14	conversation with Thomas?	14	Q When you came back to the patio and you
15	A He was right there. There was no	15	interacted with Thomas, did you observe him
16	passing, or anything of that nature. He	16	threatening anybody?
17	engaged me.	17	A Anybody in general?
18	Q Did you have a cell phone on you?	18	Q Anyone at all.
19	A Yes.	19	A No.
20	Q Why did you have to walk back in order	20	Q Did you see him being aggressive or
21	to use your cell phone to call for an	21	violent towards anybody?
22	ambulance?	22	A No.
23	A Because it was January 13th, it was	23	Q Did he have a weapon on him?
24	cold outside. I wanted to get inside where	24	A Not to my knowledge.
25	I knew I was safe and I could make the	25	Q In either hand did he have a weapon?
	Page 194		Page 196
1	proper notifications to get this kid some	1	A Not to my knowledge.
2	medical attention.	2	Q That whole night, you had never seen
3	Q I see. So your plan was to go back	3	Thomas with a weapon in his hand, correct?
4	inside where it was warmer and then place a	4	A I never seen him before.
5	call to get medical attention for Deleon?	5	Q With a weapon in his hand ever?
6	A That's correct.	6	A I never saw him, no, with a weapon.
7	Q And is it your testimony that Thomas	7	Q And do you recall what Breann Steele
8	blocked you or prevented you from going back	8	was doing when you confronted Thomas?
9	inside?	9	A I do not.
10	A He was right there.	10	Q So when you were turned to the patio
11	Q So was he blocking you?	11	area and you confronted Thomas, your plan
12	A I don't remember if it was blocking or	12	wasn't to interact with Thomas, your plan
13	what the circumstance was. He was right	13	was just to go back inside; is that correct?
14	there, though. I could not egress any	14	A Yes.
15	further.	15	Q And when you confronted Thomas at the
16	Q So Thomas was the one that -- or was	16	edge of the patio, do you recall what he was
17	the reason, his presence was the reason you	17	doing?
18	couldn't go back inside The Corner Alley?	18	A I want to say smoking.
19	A Yes.	19	Q Smoking a cigarette?
20	Q I see. And did you tell him that, say	20	A I didn't see what it was.
21	"You need to move out of the way because I	21	Q And at that point, he was standing on
22	need to get help for your friend"?	22	the sidewalk?
23	A I don't recall telling him anything.	23	A Right in that area.
24	Q And how long did you interact with	24	Q Sidewalk right by the patio?
25	Thomas before --	25	A By the entrance/exit to the patio.

	Page 197		Page 199
1	Q And did you notice that his coat was	1	I won't be able to answer that question at
2	slung over the patio wall?	2	this time.
3	A I don't recall.	3	Q Okay. So you're invoking your Fifth
4	Q Was Thomas being rude to you during	4	Amendment? Is that what you're doing?
5	this interaction?	5	A If that's what you'd like to call it,
6	A I don't recall what he said to me or if	6	yes.
7	he was rude or not. I don't recall.	7	Q Okay. All right. So what is the
8	Q Do you recall whether he was being	8	basis for your refusal, what is the legal
9	disrespectful to you?	9	basis for your refusal to answer my
10	A At that moment, no, I don't recall	10	question, which was tell me about the
11	anything.	11	altercation?
12	Q You told me that you never at any point	12	A Because of the ongoing investigation,
13	saw Thomas with a weapon on him. My	13	criminal investigation into the matter.
14	question is did you see any weapon near	14	Q What is the legal right that you're
15	Thomas at this moment when you're	15	asserting?
16	interacting with him?	16	A On advice of my counsel and I guess
17	A Nothing that I can think of, no.	17	since you said it already for me, the Fifth
18	Q Nothing that he could possibly grab and	18	Amendment.
19	use as a weapon?	19	Q Okay. All right. I still have to ask
20	A Not that I can think of.	20	you questions, okay?
21	Q When you interacted with Thomas, did	21	A I do understand that, sir.
22	you smell alcohol on his breath?	22	Q Okay. You were in attendance at the
23	A I didn't smell anything.	23	case management conference for this case
24	Q Did he appear to be slurring his	24	before Judge Polster, correct?
25	speech?	25	A Mm-hmm.
	Page 198		Page 200
1	A Again, I don't recall.	1	Q Yes?
2	Q Was he stumbling?	2	A Yes, I was, yes. Sorry.
3	A I don't recall.	3	Q And you recall at that conference,
4	Q Are you aware of the postmortem	4	Judge Polster asked you what happened,
5	toxicology test results which reveal --	5	correct?
6	A I am not.	6	A I do.
7	Q Okay. Well, they revealed that Thomas	7	Q And you recall telling him your
8	did not have any alcohol in his system. My	8	recollection of what happened, correct?
9	question to you is did you have any reason	9	A I do.
10	to think Thomas was under the influence of	10	Q And at that point, you did not invoke
11	drugs or alcohol?	11	your Fifth Amendment and refuse to answer
12	A No. I mean, no, nothing led me to	12	the Court's questions, correct?
13	believe either way, yes or no.	13	A I did not, no.
14	Q When you re-contacted Thomas at the	14	Q You answered the judge's questions
15	edge of the patio, did you conduct a threat	15	about what happened during the altercation,
16	assessment of him?	16	correct?
17	A No.	17	A To the best that I can remember, yes.
18	Q At some point, you do have an	18	Q And he asked you follow-up questions,
19	altercation with Thomas, correct?	19	correct?
20	A Yeah.	20	A I don't remember if he did or not.
21	Q Okay. Tell me everything you remember	21	Q Okay. But there was no question that
22	about the altercation.	22	the Court asked that you refused to answer;
23	A This is where I'm going to have to	23	is that fair?
24	stop you because of the ongoing criminal	24	A I don't remember refusing, no.
25	investigation and advice of my counsel that	25	Q Okay. But you're now invoking your

	Page 201	Page 203
1	Fifth Amendment right and refusing to answer these questions?	1 (THE FOLLOWING IS NOT ON THE VIDEO RECORD)
2	A That's correct, yes, sir.	2 - - -
3	Q And for the record, your lawyer was present during the conference with the Court when you were asked questions about the incident, correct?	3 VOICEMAIL GREETING: You have reached the chambers of the Honorable Dan A. Polster. We are either on the phone or away from our desks. Please leave a detailed message, including your name and phone number, and we'll get back to you as soon as we can. Thank you.
4	A Yes.	4
5	Q And your lawyer didn't object on your behalf, correct?	5
6	A I don't believe so, no.	6
7	Q Okay. And all the other lawyers were present at the conference?	7
8	A There was a lot of people there.	8
9	Q Right.	9
10	MR. TOR: All right.	10
11	So, David, my position is that your client has waived his Fifth	11
12	Amendment right regarding this incident, based both on the fact that he voluntarily answered the Court's questions about the incident and also based on the fact that he has answered a number of questions in this deposition related to that	12
13		13
14		14
15		15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23		23
24		24
25		25
	Page 202	Page 204
1	night and what happened in the events leading up to the altercation, and also because he has voluntarily answered discovery questions propounded to him in this litigation, and so my proposal is that we get the Court on the phone, see if he's available to address this issue.	1 Amendment and refused to answer the question.
2		2
3		3 Plaintiff's position is that
4		4 he has waived his Fifth Amendment
5		5 right. I am in the conference room
6		6 with all the lawyers present, along
7		7 with the court reporter, who's
8		8 transcribing this, and the witness
9		9 himself.
10	MR. LENEGHAN: Whatever manner you want to try to accomplish, whatever you want to try to do. We can certainly do that either by telephone or written motions, or whatever the case may be.	10 If anybody from the defense side wants to speak up and say anything on this message.
11		11
12		12
13		13
14		14
15		15
16		16
17		17
18		18
19		19
20		20
21		21
22		22
23	MR. TOR: Well, why don't we try by telephone and we'll see what -- yeah, we can go off the video, but stay on the record with the court reporter.	23
24	(At this time, Mr. Tor is making a phone call to Judge Polster.)	24
25	- - -	25

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1	deposition, some two or three hours ago.	1	A After the fight inside the bar.
2	MR. TOR: We should be at this number for the next couple of hours. It's 216-696-3232 if the Court would become available. Thank you.	2	Q Did you tell that to him, or something to that effect, again when you recontacted him at the edge of the patio?
3		3	A I don't recall saying that to him, no.
4	Anybody else want to add anything?	4	Q Was Thomas committing a crime standing on the sidewalk, smoking a cigarette?
5	MR. ROCHE: No, thank you.	5	A No.
6	-----	6	Q Did you have reason to think Thomas had committed any crime up to that point?
7	VIDEOGRAPHER: We're back on the record.	7	A Yes.
8	BY MR. TOR:	8	Q So why didn't you arrest him?
9	Q Were you using your position as a Cleveland police officer to compel or coerce Thomas Yatsko into leaving the area when you confronted him at the edge of the patio?	9	A He wasn't my main concern.
10	MR. PIKE: Objection.	10	Q You told me earlier that a police officer, even when he's working secondary employment, has a responsibility to arrest an individual he witnesses committing a crime. You claim to have witnessed him committing a crime, correct?
11	Form.	11	MR. PIKE: Objection.
12	MR. ROCHE: Objection.	12	Form.
13	A No.	13	A I did witness.
14	Q Have you read the deposition transcript of Breann Steele?	14	Q But you did not arrest him?
15		15	A Right.
16		16	Q Did you call for backup to have
17		17	somebody arrest Thomas?
18	A I have not.	18	A Never got the opportunity to do that.
19	Q Okay. Are you aware what her testimony is?	19	Q Was that going to be your plan?
20	A No.	20	A That was what I was going to do.
21	Q She testified that after you approached Thomas near the edge of the patio, you told him, "It's time to go, you need to get the fuck on." Did you say that to him?	21	Q Ms. Steele testified that Thomas explained to you that he didn't have a ride home. Do you recall hearing that?
22	A No.	22	A I don't remember anything like that.
23	Q You dispute her testimony?	23	Q Ms. Steele testified that you said to Thomas, quote, "I've given you plenty of chances tonight." What did you mean by that?
24	A Yes.	24	A I don't recall saying that to him.
25	Q In your police training, were you trained to use the phrase, "Get the fuck on" as part of a de-escalation technique?	25	Q Do you deny saying that?
1	A No.	1	A Yeah, because I don't remember saying -- interacting with him at all other than what I told you after the first fight, that's it.
2	Q Is it a proper de-escalation technique?	2	Q Did Thomas ask for you to call a unit for a right home?
3	A No.	3	A No.
4	Q Did you tell Thomas that he needs to leave?	4	Q Were you aware that Thomas was looking for a ride home?
5	A I don't recall.	5	A No.
6	Q Would that have been an appropriate thing for you to say?	6	Q Did you do anything to help him get a
7	A The only thing I remember telling him is, "You can't come back in the bar."	7	
8	Q And when did you tell him this?	8	

	Page 209	Page 211
1 ride home?		1 Thomas?
2 A No.		2 A No.
3 Q Did you say to him, "You can walk for		3 Q Do you dispute that?
4 all I care"?		4 A Yes.
5 A No.		5 Q Ms. Steele said that you went
6 Q Did you say, "You need to get the fuck		6 toe-to-toe with Thomas. Do you dispute
7 out of here"?		7 that?
8 A No.		8 A Yes.
9 Q That was Breann Steele's testimony. Do		9 Q She testified that both you and Thomas
10 you dispute her testimony?		10 threw punches at one another. Do you
11 A Yes.		11 dispute that?
12 Q Were you annoyed with Thomas?		12 A Yes.
13 A No.		13 Q Did Thomas throw any punches at you?
14 Q Were you fed up with him?		14 A Yes.
15 A No.		15 Q Did Thomas shove you?
16 Q Were you scared by him?		16 A I don't know.
17 A No.		17 Q How many times did Thomas punch you?
18 Q Did you feel threatened by him?		18 A Multiple times.
19 A No.		19 Q Where did he punch you?
20 Q Did you feel he was disrespecting you?		20 A In the face and head.
21 A No.		21 Q Did you punch him?
22 Q You told me that it was terrible		22 A No.
23 outside and it was very cold. Did you		23 Q Did you shove him?
24 expect that Thomas would just start walking		24 A No.
25 home?		25 Q Did you touch him at all?
	Page 210	Page 212
1 A I didn't know what he was going to do.		1 A I don't recall touching him, no.
2 Q Was there any urgency that required		2 Q Do you recall pulling your gun?
3 Thomas to leave the area, from your point of		3 A Yes.
4 view?		4 Q Why did you pull your gun?
5 A No.		5 A To back him off of me.
6 Q Did he make any attempts that you could		6 Q Did you tell Thomas you were going to
7 see to go back inside The Corner Alley?		7 pull your gun before you did so?
8 A No.		8 A No.
9 Q Did Breann say -- Breann Steele say,		9 Q Breann Steele's testimony is that you
10 "We can call him an Uber"?		10 and Thomas threw an even number of punches.
11 A I don't recall her saying anything.		11 I take it you dispute that testimony?
12 Q Okay. Do you recall her saying, "If		12 A Yes.
13 you're going to make him walk, at least let		13 Q She testified that you approached
14 him get his coat"?		14 Thomas aggressively. Do you dispute that?
15 A No.		15 A Yes.
16 Q Do you remember Thomas grabbing his		16 Q She testified that you initiated the
17 coat?		17 aggression. Do you dispute that?
18 A No, I don't recall that at all.		18 A Yes.
19 Q Did you hand him his coat?		19 Q She testified that you provoked Thomas
20 A I don't know.		20 to fight. Do you dispute that?
21 Q You don't know?		21 A Yes.
22 A I don't know.		22 Q At any point during the altercation
23 Q Breann Steele testified that you told		23 with Thomas did you tell him he was under
24 Thomas, quote, "I don't like your body		24 arrest?
25 language." Do you recall saying that to		25 A No.

	Page 213		Page 215
1	Q Do you recall shooting Thomas?	1	anything of that nature, was what -- like a
2	A I do not.	2	light switch, nothing like that.
3	Q Did you warn Thomas before shooting	3	It's just survive, you're trying to
4	him?	4	survive, I was trying to survive being
5	A I don't recall any of the incident.	5	maliciously attacked. That's what I
6	Q Is any of your -- is your memory -- let	6	remember.
7	me start that question over.	7	Q So Thomas weighed at the time about 149
8	Do you have a memory of the entire	8	pounds. How much did you weigh at the time
9	altercation with Thomas?	9	of the incident?
10	A No.	10	A I have no idea. Probably about 245
11	Q Are there parts that you don't	11	maybe.
12	remember?	12	Q And how tall are you?
13	A Yes.	13	A Five seven I am.
14	Q Which parts don't you remember?	14	Q Do you recall whether Thomas was taller
15	MR. PIKE: Objection.	15	or shorter than you?
16	Form.	16	A I would say the same height.
17	A It's hard to say from where it starts	17	Q Did he appear to be smaller than you in
18	and where it ends.	18	terms of stature and weight?
19	Q You do have a memory of pulling your	19	A He appeared to be muscular.
20	gun?	20	Q And I think you told me earlier you
21	A I do.	21	were able to remove him from Deleon with
22	Q You don't have a memory of pulling the	22	just one hand; is that right?
23	trigger?	23	A Yeah.
24	A I do not.	24	Q Do you recall Thomas saying anything
25	Q What is your next memory after pulling	25	to you during the altercation?
	Page 214		Page 216
1	the trigger?	1	A I remember two things. I can remember
2	A I hear somebody -- somebody yelling	2	him -- I can remember him shouting that I
3	something about a gun.	3	was going to have to kill him and I can
4	Q And did you see a gun in your hand?	4	remember him shouting that he was going to
5	A Yes.	5	kill me.
6	Q And what did you do once you saw that	6	Q Your testimony is that Thomas
7	you had a gun in your hand?	7	threatened to kill you?
8	A I believe I put it away.	8	A Yes.
9	Q And why did you put it away?	9	Q And when did he do this? When did he
10	A Just, you know, like instinct, I	10	make this threat to you?
11	guess. I don't know. I don't have an	11	A As he was attacking me.
12	answer as to why I put it away right away.	12	Q Was that before or after you drew your
13	I don't -- I don't have an answer.	13	weapon?
14	Q Was there any reason for you to keep it	14	A He was attacking me before I drew my
15	out?	15	weapon.
16	A I don't know.	16	Q For how long before you drew your
17	Q Do you believe that your police	17	weapon?
18	training kicked in during this incident?	18	A I don't know.
19	MR. PIKE: Objection.	19	Q Seconds, minutes?
20	Form, foundation.	20	A I have no idea.
21	A I believe -- I believe survival kicked	21	Q Do you remember how many punches he
22	in on this instance.	22	landed on you before you drew your weapon?
23	Q What do you mean by that?	23	A I do not. It was multiple times I was
24	A Survival. I mean, I don't -- I'm not	24	hit.
25	going to say that the police training, or	25	Q You were hit multiple times before you

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1	drew your weapon?	1	A No. I was not given a chance to cry
2	A Yes; to my recollection, yes.	2	out, to shout, to do nothing.
3	Q And this whole time, you're telling me	3	Q You couldn't have turned back into the
4	you didn't put a hand on Thomas?	4	bar and walked back inside?
5	A Did not.	5	A No, I could not have done that, no.
6	Q Did Thomas shout, "You'll have to kill	6	Q And why not?
7	me" before or after you drew your weapon?	7	A Because Thomas was on me like no
8	A Before.	8	tomorrow. I don't know how to describe it
9	Q So Thomas shouted, "You'll have to kill	9	to you, but he was on me. There was no
10	me," and then shortly thereafter, you drew	10	getting this kid off of me. None.
11	your weapon?	11	Q If you had had, say, your Taser on you,
12	A I didn't draw my weapon until after I	12	would you have been able to use it?
13	was being attacked.	13	A No.
14	Q Which was after he had made this	14	Q What about a baton?
15	comment, "You'll have to kill me"?	15	A No.
16	A Yeah.	16	Q Pepper spray?
17	Q And was it your intention in drawing	17	A No.
18	your weapon to kill Thomas?	18	Q And so no intermediate weapon would
19	A Absolutely not.	19	have been --
20	Q What was your intention in drawing your	20	A No.
21	weapon?	21	Q If you had an intermediate weapon on
22	A To get this kid off of me.	22	you, you don't think you would have been
23	Q And did it work when you drew your	23	able to use it?
24	weapon?	24	A No.
25	A No. It came right threw it.	25	Q Why not?
	Page 218		Page 220
1	Q And so did you reholster your gun since	1	A Because I was being viciously attacked
2	that technique didn't --	2	by this kid. I didn't have a chance to do
3	A No, I did not.	3	any of that, to get to anything. I'm lucky
4	Q Did you pull the trigger as a survival	4	that I was able to get to my firearm.
5	instinct?	5	Q So you felt your only option was to
6	A I have no idea.	6	pull your firearm and shoot Thomas?
7	Q You have no idea why you pulled --	7	A That wasn't my -- see, my only option
8	A I have no idea. I don't remember it.	8	was to survive the attack that I was being
9	Q When Thomas was shouting, "You'll have	9	placed on by your client. That's the only
10	to kill me," and then threatened to kill	10	thing I was able to do was get to my firearm
11	you, when Thomas threatened to kill you,	11	and save my life. That's it.
12	what was your understanding about how he was	12	MR. TOR: All right.
13	going to kill you?	13	Why don't we take a five minute
14	A I have no idea.	14	break.
15	Q Did you think he was going to beat you	15	VIDEOGRAPHER: We're off on
16	to death with his fists?	16	the record.
17	A I have no idea what he was going to do	17	---
18	to me.	18	(Short recess taken)
19	Q And did you try to run away?	19	---
20	A I did not try to run away. I was	20	VIDEOGRAPHER: We are back
21	backing away from him.	21	on the record.
22	Q Did you try to get help?	22	BY MR. TOR:
23	A I was not given a chance to get help	23	Q All right, sir, I have up on the screen
24	from anybody.	24	video footage. This is from a surveillance
25	Q Did you cry out for help?	25	video camera from The Corner Alley that we

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1 received from The Corner Alley's lawyers.
 2 I'm not going to play this video for you.
 3 All I'm going to do is ask you to identify
 4 yourself at various points, okay?
 5 A (Nodding).
 6 Q Can you look up at the screen? Okay.
 7 The time stamp is 22:44:17 seconds, right?
 8 It's on the top right?
 9 A Yeah.
 10 Q Okay. So what we're looking at, sir,
 11 is the patio outside The Corner Alley in the
 12 front, correct?
 13 A Yeah.
 14 Q And I've got a cursor here, so I'll use
 15 it. This is you, right, with the dark boots
 16 and the dark pants?
 17 A I don't -- I don't know.
 18 Q Okay. All right. I'll have to show
 19 you a couple clips so we can establish that
 20 that's you. So is that you right there at
 21 22:45:47 where I have my cursor?
 22 A Again, I see -- I see the bottom half
 23 of a torso. I can't tell if that's me.
 24 Q Okay. Fair enough. Let me show you
 25 another still image here. Is that you, sir?

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1 A Right there? That's me, yes.
 2 Q At 22:47:03, and that's your gun in
 3 your right hand?
 4 A I can't really see the gun.
 5 Q Yeah, I'll play it for just a few
 6 seconds so you can see, okay, so keep your
 7 eye on the screen.
 8 A Okay.
 9 Q Is that your gun in your right hand?
 10 A I see the gun now, yes.
 11 Q All right. So that is you; is that
 12 correct?
 13 A That's me, yes.
 14 Q And that's Thomas Yatsko on the ground,
 15 correct?
 16 A Yeah.
 17 Q He's wearing tan boots?
 18 A Yeah.
 19 Q Yeah. So what we're looking at is the
 20 area where the altercation took place
 21 between you and Thomas, right?
 22 MR. ROCHE: Objection.
 23 BY MR. TOR:
 24 Q You were telling us earlier about the
 25 altercation. I just want to confirm, we're

1 looking at roughly the location where that
 2 took place?
 3 A Yeah. Yeah, that's my blood right
 4 there on the ground.
 5 Q That's your blood on the ground?
 6 A Right, those multiple spots, that's my
 7 blood, yes.
 8 Q I'm going to go back in time a little
 9 bit, and this area where my cursor is,
 10 that's the edge of the patio, right?
 11 A It looks like -- it looks like where
 12 the boots are at is on the other side of the
 13 patio, which is the common sidewalk --
 14 Q The common --
 15 A -- that I remember, the common
 16 sidewalk. Runs along, you know, Euclid
 17 Avenue.
 18 Q Okay. So where these tan boots are
 19 standing is the common sidewalk area?
 20 A Right.
 21 Q And is this the area where you first
 22 had contact with Thomas?
 23 A That's where -- when I walked up,
 24 that's where he was -- he was standing
 25 there. That's what I remember, yes.

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1	twice at that point?	1	together, trying to get it together to where
2	A I'm not aware -- I'm not aware of	2	I could understand what was unfolding, what
3	that. I told you when you asked me about	3	had happened. I didn't know -- I don't know
4	the gun, the thing that shakes me up is the	4	-- I don't know how to answer it.
5	gun. I hear the voice about the gun, the	5	Q You wanted somebody to call 911, but
6	gun. That's kind of what shakes me out of	6	you weren't going to call 911?
7	it, so I don't know what happened in between	7	A I was shouting for someone to call 911,
8	there.	8	yes.
9	Q Okay. Well, let's talk about what	9	Q And did you tell anybody to let them
10	happened afterwards, okay?	10	know that a Cleveland police officer had
11	A All right.	11	been involved in some type of situation?
12	Q So after you were shaken out of it,	12	A I don't recall saying that.
13	what do you remember?	13	Q Do you recall saying anything else to
14	A I remember the people and a lot of,	14	anybody other than call 911?
15	like, chaotic behavior, a lot of shouting.	15	A No.
16	You know, a lot of -- a lot of people	16	Q What's the next thing you remember?
17	running in and out, I remember that. That's	17	A The chao -- the scene, the scene right
18	all I remember.	18	there, the chaotic scene becoming even more
19	Q Did you provide any first aid to	19	chaotic as police and fire, EMS, as those
20	Thomas?	20	folks all arrive. So it just, you know,
21	A I remember yelling for someone, not	21	became a larger, more involved chaotic
22	somebody specific, for someone to call 911.	22	scene.
23	That's all I remember doing.	23	Q Do you remember seeing Cleveland police
24	Q And why did you think somebody needed	24	officers or any other type of police
25	to call 911?	25	officers arrive on the scene?
	Page 226		Page 228
1	A Well, there was a group of folks around	1	A I don't remember seeing Cleveland guys.
2	somebody's down, I could see their boots.	2	I remember seeing uniforms. I don't know
3	I'm bleeding profusely from my face and	3	which department they were with.
4	head. I don't know where I'm bleeding	4	Q And were you placed in handcuffs and
5	from.	5	placed under arrest?
6	I'm spitting globs, if that's even a	6	A No.
7	word, I don't know if that's even a word,	7	Q Were you escorted from the scene by a
8	you know, huge amounts of blood, I'm	8	police officer?
9	spitting that out, so 911 needs to be	9	A No.
10	called. The med -- somebody with medical	10	Q How were you removed from the scene?
11	training needs to come there.	11	A EMS came up to me and saw the extent of
12	Q So you're not really sure what had	12	my injuries and walked me to the side of an
13	happened, you just knew that 911 needed to	13	ambulance and then I walked inside of it.
14	be called?	14	Q And you got into the ambulance and they
15	A Absolutely.	15	took you to University Hospitals?
16	Q And are you aware of whether any of the	16	A Right.
17	people that were around Thomas were medical	17	Q Were you transported by stretcher?
18	professionals or capable of providing first	18	A No.
19	aid?	19	Q And did any other officer ride with you
20	A I'm not aware of that.	20	in the ambulance?
21	Q Okay. Did you yourself call 911?	21	A Yeah. I think I said earlier that I
22	A I did not.	22	believe there was two of them.
23	Q And why not?	23	Q Do you know which ambulance company it
24	A I didn't know the extent of my injuries	24	was?
25	and I was trying to focus on keeping it	25	A It was Cleveland EMS.

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1	Q Did you tell anybody in the ambulance what had happened?	1	A Yes.
2	A No.	2	Q That's the one you're carrying? Did you ever complete a use of force report for this incident?
3	Q How soon after the incident with Thomas were you taken from the scene by ambulance?	3	A I did not.
4	A It was moments. I don't know how long, how much time elapsed.	4	Q And why not?
5	Q And what happened to your gun? Was it taken from you or did you keep it on you that night?	5	A I was never instructed to do so.
6	A No, it was taken.	6	Q Isn't there a regulation requiring officers to complete use of force reports any time force is used?
7	Q By whom?	7	A For the -- the -- for -- it's called less lethal, I guess you would call it, less lethal force, there's forms that are done.
8	A It was initially taken by I want to say Sergeant Todd.	8	For this incident, use of deadly force, I don't know protocol. I believe that homicide handles it all.
9	Q Is he with the Cleveland Police Department?	9	Q So you're not sure what the protocol is in terms of reporting the use of lethal force?
10	A He is, yes.	10	A Right, other than what I stated about homicide.
11	Q Did you know him before this incident?	11	Q Do you claim that Thomas committed any crime against you?
12	A Yes.	12	A Yes.
13	Q And what did he do with the gun?	13	Q What crime?
14	A Protocol is to turn it over to homicide.		
15	Q When did he take the gun from you?		
16	A I think when we were in the ambulance. I think.		
	Page 230		Page 232
1	Q So you think he rode with you in the ambulance?	1	A Felonious assault.
2	A I'm not sure. I think there was two guys, but there might have been only one and he came in and left. I'm not really sure.	2	Q Did you document that anywhere?
3	Q What did Sergeant Todd do to preserve the gun as evidence?	3	A I did not, no.
4	A I have no idea.	4	Q Did you at any point claim that Thomas attempted to kill you, attempted homicide?
5	Q To make sure that fingerprints didn't get on it? Anything?	5	A Did I -- can you explain how you --
6	A To my knowledge, I have no idea what he did with it.	6	what do you mean by "claim"? I don't understand.
7	Q Did you hand him your gun or did he take it from you?	7	Q Right. Well, you claim that Thomas committed a felonious assault against you.
8	A No, I handed it to him.	8	Have you ever claimed that Thomas committed an attempted homicide against you?
9	Q And have you gotten that gun back?	9	A I've never been interviewed by anybody to make that claim, if that makes sense to you.
10	A No.	10	Q So to whom did you claim the felonious assault, to anybody?
11	Q Do you know where it's being held?	11	A No.
12	A I would say probably homicide or the coroner's office or maybe our property room. I don't -- I don't know. I don't know what they --	12	Q Okay. But you're not claiming that he committed an attempted homicide against you, are you?
13	Q So you've been issued a different gun now?	13	A I don't know how it would be interpreted.
14		14	Q Okay. Well, I asked you what --
15		15	A You're asking me how I would interpret

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1	it?	1 documentation or written materials about
2	Q Yeah.	2 this incident by anybody from the Cleveland
3	A I don't know how I would interpret it	3 Police Department?
4	versus how it is truly interpreted by, like,	4 A No, I have not.
5	you know, the courts or who makes that	5 Q You told me earlier that you're on
6	determination. I don't have -- I don't know	6 restricted duty. Does that entail any kind
7	how to answer the question.	7 of medical restrictions on your ability to
8	Q Sure. I asked you what crimes Thomas	8 do work?
9	had committed against you. The only crime	9 A No.
10	you told me is felonious assault, correct?	10 Q So you don't have any medical
11	A Felonious assault. I mean, it could be	11 restrictions?
12	attempt murder, I guess. I mean, it's all	12 A No.
13	in what -- not so much what I say or what	13 Q So if it weren't for the ongoing
14	you say, but what the evidence says, and I	14 criminal investigation, your understanding
15	don't know the answer to the question	15 is that you'd be able to return to regular
16	because I don't know what the evidence says.	16 duty?
17	Q Well, you're a police officer of 27	17 A No, not necessarily because I'm still
18	years, so I presume you have a good	18 under -- when you said medical, it kind of
19	understanding of the criminal code in Ohio,	19 triggered in my mind. I'm still under
20	fair?	20 concussion protocol and being seen for that,
21	A That's fair, but you got to understand,	21 for the concussion, so I guess then there
22	we only respond -- in basic patrol, we	22 would be medical restrictions until I was
23	respond to the initial stuff and then	23 cleared of that.
24	everything else investigative is done by	24 Q Speaking of concussion, have you filed
25	somebody else, so what I might say don't	25 a Workers' Comp claim related to this
	Page 234	
1	mean nothing. It's all what they present.	1 incident?
2	That's why I'm having a hard time answering	2 A Yes.
3	your question.	3 Q And what is the status of that claim?
4	Q Okay. Well, you didn't have a hard	4 A I believe it is on hold.
5	time telling me it was a felonious assault.	5 Q Do you know how long it's on hold for
6	A Based on my thinking, it's at least a	6 or why it's on hold?
7	felonious assault, yes.	7 A I don't know the reason why and I don't
8	Q And did you make any documentation?	8 know how long it's on hold for.
9	A I did not, no.	9 Q Do you have an attorney representing
10	Q And when you were interviewed by the	10 you in that matter?
11	internal affairs people last year, did you	11 A George Mineff.
12	tell them that you believed Thomas committed	12 Q George Mineff. Same guy who
13	a felonious assault?	13 represented you in your previous Workers'
14	A I don't recall them asking me any	14 Comp claims?
15	questions on what I thought.	15 A Right, right.
16	Q Are you aware of whether the Cleveland	16 Q Under whose Workers' Comp coverage have
17	Police Department conducted an investigation	17 you filed the claim, the City of Cleveland
18	into this incident?	18 or Corner Alley?
19	A I don't believe they did. I think that	19 A No, I believe it was filed under The
20	the sheriffs did.	20 Corner Alley.
21	Q Were you ever debriefed about this	21 Q And as a requirement in order to get
22	incident by anybody at the Cleveland Police	22 approved for secondary employment at Corner
23	Department?	23 Alley, did you have to provide the City of
24	A No.	24 Cleveland proof of Corner Alley's Workers'
25	Q Have you ever been provided any	25 Comp coverage?

	Page 237		Page 239
1	A Yes.	1	from it?
2	Q And to your knowledge, has The Corner	2	A Yes.
3	Alley disputed the Workers' Comp claim?	3	Q What are your symptoms?
4	A I -- I don't know.	4	A The neck is real stiff, don't have much
5	Q When was this Workers' Comp claim	5	mobility to the right or to the left, and
6	filed?	6	constant pain.
7	A It's got to be sometime last year,	7	Q Where is the pain? Can you point to
8	relatively I would say in the wintertime or	8	it?
9	spring. I don't know the dates, so...	9	A I would say it's on the sides of the
10	Q What are you claiming, what injuries	10	neck and then up in the middle. It's kind
11	are you claiming?	11	of like the entire back of the neck going up
12	A I think the concussion's listed on	12	into my head and then going down into my
13	there, the neck sprain, and I think the	13	neck, shoulder area, like the top of your --
14	issue with the amount of stitches, stitches	14	like, top where your coat would be.
15	I had in and outside of my mouth.	15	Q And on a scale from 1 to 10, how severe
16	Q Are you still suffering from the	16	is the pain right now?
17	stitches?	17	A Right now, it's probably about 6. It
18	A As a matter of fact, I am.	18	gets as high as, like, 9, 10. I take
19	Q What is the problem, the ongoing	19	medication for it, prescribed.
20	problem related to the stitches?	20	Q What medication?
21	A On the inside of my lower lip, I can	21	A I believe it's a muscle relaxer.
22	show it to you. I don't know if you can see	22	Q Are you on a muscle relaxer right now?
23	it or not.	23	A I am not, no.
24	Q Go ahead.	24	Q How often do you take a muscle
25	A Can you see it, right in here? There's	25	relaxer?
	Page 238		Page 240
1	a -- I don't know if you can see it. It's	1	A As needed.
2	kind of like a -- it's not -- like if you	2	Q And how often does that -- how often is
3	ran your tongue around the inside of your	3	that?
4	mouth, it would be I guess -- there would be	4	A Depends. You know, a lot of times I
5	no bump in the road per se, if that makes	5	get it from sitting or laying a certain way,
6	sense.	6	I'll wake up with it. Other times I'm just
7	Q So now you feel a bump?	7	-- I'm not doing anything and all of a
8	A There is -- I don't feel it, there is	8	sudden I can't turn my neck all the way to
9	one there.	9	the left, so it varies.
10	Q There's a bump there.	10	Q Are you under the care of a doctor for
11	A Every time that I eat, I bite down on	11	this?
12	it, so I am still, yes, suffering from it.	12	A I am.
13	Q Okay. You suffer when you bite down on	13	Q Okay. Well, who's your doctor that's
14	it?	14	treating for your neck sprain?
15	A Whenever I eat and it's, you know, a	15	A That would be -- same one for the
16	few times a day, I'll catch it and I	16	concussion. It's Dr. Rainey, Heather
17	(indicating). It catches me, I should say.	17	Rainey. She's at Metro.
18	Q And are you being provided any medical	18	Q Other than the muscle relaxers, has she
19	treatment for that?	19	prescribed any other treatment for your neck
20	A I don't know what could be done for	20	sprain?
21	it. Something you got to live with.	21	A She's -- not for the neck, not for the
22	Q Right. Does it impair your ability to	22	neck. Well, she's given me a pain
23	do your job in any way?	23	medication for my head and neck and she's
24	A I don't believe so.	24	also prescribed me migraine medication
25	Q This neck sprain, do you still suffer	25	because I get migraines as well.

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1	Q Has she -- we're over a year now since 2 the incident. Has she told you whether you 3 should expect to have any improvement with 4 respect to your neck sprain?	1 See, this is what I mean.	
5	A She hasn't and the -- there's a holdup 6 with the Workers' Comp, so I can't get 7 physical therapy approved.	2 Q When did this incident occur?	8 A This is back in -- back probably like 9 September or so when I was doing that 10 equipment.
8	Q Well, have you tried to -- have you 9 undergone the physical therapy anyway even 10 though it's not being covered by Workers' 11 Comp?	6 Q Have you had any other incidents like 7 this where your memory's failed you?	12 A Yeah, a lot of incidents, you know, 13 with family and friends and it could be -- 14 it could be the smallest thing as 15 remembering a song that you hear that you 16 know and there's no recollection of who 17 sings the song or if it has any meaning to 18 you, or anything like that. I don't have 19 that -- I don't have that memory to pull 20 from.
12	A I have not, no.	17 Q And has your doctor, Dr. Rainey, given 18 you an idea about what your future outlook 19 is with respect to the concussion?	21 A I'm supposed to go to this thing. I 22 know I'm going to butcher the name. It's 23 some sort of psychotherapy where it's an 24 extensive -- like eight hour thing where 25 they give you -- I don't know if it's testing or it's questions, something along
13	Q Is that something you think you need, 14 physical therapy?		Page 244
15	A I would like to do it, but, again, it's not being provided at this time.	1 those lines, and from that, you are supposed 2 to -- they're supposed to be able to tell 3 you what's next, what you can expect, what 4 the future holds, and I haven't gone to that 5 yet.	
17	Q Okay. Do you have health insurance?	6 Q Do you have an expectation when you 7 will go to that --	
18	A Through the city, yes.	8 A I go to it, because I spoke to the 9 doctor only a day or two ago, I go to it on 10 the 6th of February.	
19	Q And have you tried to go through that 20 health insurance coverage for physical 21 therapy?	11 Q And where is that?	
22	A I have not, no.	12 A That's at Metro as well.	
23	Q What about your concussion, do you 24 still suffer the effects of the concussion?	13 Q Okay. All right. Let's jump back to 14 University Hospitals after the incident. 15 You're treated at the hospital there?	
25	A Most definitely.	16 A In the emergency room, yes.	
	Page 242	17 Q And then you were released after a few 18 hours?	
1	Q Okay. Tell me about that.	19 A Yeah.	
2	A My memory is bad. I don't do well with 3 times, dates, places.	20 Q And these two police officers, are they 21 with you the whole time?	
4	I'll give you one specific. One of my 5 administrative duties at the district was to 6 inventory the riot gear that the city issued 7 us during the Republican National Convention 8 and I was charged with going through and 9 making sure that everybody still had that 10 equipment, and I was speaking to an 11 individual about his equipment and he showed 12 it to me, and I've worked with this guy 13 since I've been in the Fifth District, which 14 is, you know, five years, give or take, and 15 I said to him, I said, "You're going to have 16 to excuse me," I said, "I apologize," I 17 said, "but on this list, can you find your 18 name for me," and he thought, of course, 19 that I'm joking around.	22 A There were so many people in and out of 23 the room. I don't remember them being in 24 there beyond the initial.	
20	He goes, "Come on, really?"	25 Q And how did you get home that night?	
21	You know, I could not remember his name 22 and I've worked with this guy closely.		
23	Q Who is this?		
24	A His name is -- he's a detective. Mike 25 -- oh, what is his last name? Oh, boy.		

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1	A I was driven home by the FOP president,	1	Q Well, do you remember having a
2	Captain Bentley.	2	headache?
3	Q And how did you get your car?	3	A Had a real bad headache.
4	A I believe they -- two policemen brought	4	Q Real bad headache. Like on a scale
5	it to the house.	5	from 1 to 10?
6	Q And were you able to drive the next	6	A 10, 10 plus.
7	day?	7	Q 10 plus. Did you feel dizzy?
8	A I did not drive the next day.	8	A I don't recall. I was sitting on the
9	Q What about the day after that?	9	bed.
10	A No, I don't believe I -- I believe I	10	Q Were any of your teeth knocked out or
11	was in the house for probably a week or so.	11	loose?
12	Q When did you return to work?	12	A Not that I can recall, no.
13	A I want to say it might have been the	13	Q Do you recall whether any tests or
14	following Monday. The following Monday, you	14	scans were performed at the hospital on you?
15	know, give or take because I was on	15	A I believe a CAT scan.
16	administrative days, which is, you know,	16	Q And by the time you were done at the
17	it's kind of rule of thumb.	17	hospital, do you recall what the doctors
18	Q When you say the following Monday, do	18	gave you as a diagnosis?
19	you mean -- so the incident happened on a	19	A Well, paperwork, follow up with your --
20	Saturday. Do you mean two days later or --	20	with your primary care physician, Tylenol
21	A No.	21	for pain, that kind of thing.
22	Q -- a week and two days?	22	Q Right, but did they give you any kind
23	A Yeah, like that, around that time	23	of medical diagnosis?
24	frame.	24	A No, I don't remember any of that, no,
25	Q So the week you were in your house, how	25	I'm sorry. I'm sorry. I thought that's
	Page 246		Page 248
1	were you able to get food for yourself to	1	what you meant.
2	eat?	2	Q Is it your understanding that the
3	A I had my father staying with me.	3	Cleveland -- that the City of Cleveland is
4	Q Okay. And your father, was he able to	4	refusing to defend you and indemnify you in
5	go out and get food for you?	5	this lawsuit?
6	A Yeah.	6	MR. PIKE: Objection.
7	Q And did you leave the house at all that	7	Form, foundation.
8	week?	8	A Yeah, that's my understanding.
9	A Not that I can recall, no.	9	Q Have you tried to contest this?
10	Q All right. Back at the hospital, do	10	A No.
11	you remember what you told the doctors that	11	Q Did you file a grievance to contest
12	happened?	12	this?
13	A No, I don't remember talking anything	13	A No.
14	with them.	14	Q Do you intend to at any point?
15	Q By the time you're at the hospital, did	15	A I can't answer that, sir. I don't
16	you feel nauseous?	16	know.
17	A No.	17	Q Okay.
18	Q Do you know whether you had vomited?	18	MR. PIKE: Jeremy, I
19	A I don't remember throwing up.	19	can't hear testimony that's going
20	Q Did you have blurry vision?	20	on.
21	A I don't know. My head was bothering me	21	MR. TOR: You know, I
22	a lot, my face. Everything was bothering	22	think Nick has gone to address it,
23	me. I don't remember specifics about was	23	so I'll wait until he comes back.
24	this -- was I blurry or clear view, I don't	24	BY MR. TOR:
25	remember.	25	Q Do you have -- did you ever obtain

	Page 249		Page 251
1	insurance coverage specifically for your	1	record.
2	work as a security guard at any of these	2	---
3	private establishments?	3	(Signature not waived)
4	A No.	4	(Deposition adjourned at 5:48 p.m.)
5	Q Okay. Are you aware of whether such	5	---
6	insurance exists?	6	
7	A Not specifically, no.	7	
8	Q Are you a member of the FOP?	8	
9	A Yes.	9	
10	Q How long have you been a member?	10	
11	A Since I was promoted back in 2002.	11	
12	MR. TOR: All right.	12	
13	Give me a couple minutes. I just	13	
14	want to review my notes, see if I	14	
15	have any follow-up questions. Yeah,	15	
16	I guess I can pass the witness for	16	
17	now if anybody wants to ask	17	
18	questions.	18	
19	MR. PIKE: It's 10 to	19	
20	6:00.	20	
21	MR. DiCELLO: Want to go	21	
22	off the record and figure out what	22	
23	everybody wants to do?	23	
24	VIDEOGRAPHER: We're off the	24	
25	record.	25	
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1	---	1	CERTIFICATE
2	(Discussion had off the record.)	2	
3	---	3	THE STATE OF OHIO,)
4	VIDEOGRAPHER: We're back on	4) SS:
5	the record.	5	COUNTY OF CUYAHOGA.)
6	MR. TOR: Sir, I don't	6	
7	have any more questions at the	7	I, Angelika P. Shane, a Notary Public
8	moment. The understanding among the	8	within and for the state of Ohio, duly
9	lawyers in the room is we'll adjourn	9	commissioned and qualified, do hereby
10	for now, leaving open the deposition	10	certify that the within-named witness,
11	to be continued at a later date.	11	SERGEANT DEAN GRAZIOLLI, was by me first
12	Anyone want to put anything	12	duly sworn to testify to the truth, the
13	else on the record?	13	whole truth and nothing but the truth in the
14	MR. ROCHE: No.	14	cause aforesaid; that the testimony then
15	MR. PIKE: No.	15	given by the above-referenced witness was by
16	MR. LENEGHAN: No, that's	16	me reduced to stenotype in the presence of
17	fine. We're adjourning for now.	17	said witness; afterwards transcribed, and
18	You guys are completed and if	18	that the foregoing is a true and correct
19	cross-examination by the other	19	transcription of the testimony so given by
20	parties commence, we can coordinate	20	the above referenced witness.
21	that and see where we go from	21	I do further certify that this
22	there.	22	deposition was taken at the time and place
23	MR. ROCHE: Agree.	23	in the foregoing caption specified and was
24	MR. PIKE: Agree.	24	completed without adjournment.
25	VIDEOGRAPHER: We're off the	25	

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1 I do further certify that I am not a
2 relative, counsel or attorney for either
3 party, or otherwise interested in the
4 event of this action.

5 IN WITNESS WHEREOF, I have hereunto set
6 my hand and affixed my seal of office at
7 Cleveland, Ohio, this 7th day of March,
8 2019.

9
10
11
12 Angelika P. Shane, Notary Public
13 Within and for the State of Ohio
14 My commission expires 6/21/20

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